

GOVERNMENT OF THE VIRGIN ISLANDS
OF THE UNITED STATES

PUBLIC SERVICES COMMISSION

IN THE MATTER OF THE VIRGIN ISLANDS) VOLUME I of III
WATER AND POWER AUTHORITY PETITION)
FOR ELECTRIC SYSTEM RATE RELIEF) PSC DOCKET No. 678

EVIDENTIARY HEARING

Before: KYE WALKER, ESQ., Hearing Examiner

Date: Tuesday, October 22, 2019

Location: Public Services Commission
Barbel Plaza
St. Thomas, Virgin Islands

Time: 9:30 a.m.- 3:24 p.m.

REPORTED BY:

Desiree D. Hill, RMR
Hill's Reporting Services
P.O. Box 307501
St. Thomas, Virgin Islands 00803
(340) 777-6466

A-P-P-E-A-R-A-N-C-E-S:

HALL & GRIFFITH, P.C.
Attorneys for WAPA
P.O. Box 305587
91B Estate Solberg
St. Thomas, VI 00803

BY: SAMUEL H. HALL, JR., ESQ.
- and -
MARIE THOMAS-GRIFFITH, ESQ.

LAW OFFICE OF JOHN H. BENHAM, P.C.
Attorney for PSC
P.O. Box 11720
1001 Frederiksberg Gade
St. Thomas, Virgin Islands 00801

BY: Boyd L. Sprehn, Esq.

PSC Staff Present:

Donald Cole, Executive Director
Tisean Hendricks, Legal Support Specialist

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1 P R O C E E D I N G S

2 * * *

3 HEARING EXAMINER: This is Docket 678 in
4 the matter of the Virgin Islands Water and Power
5 Authority's petition for Electric System Rate
6 Relief. I am the hearing examiner. My name is
7 Kye Walker. I'm going to ask that counsel for
8 the PSC introduce himself and either introduce
9 everyone who is here for the PSC or have those
10 individuals introduce themselves, and then we
11 will move on to the Water and Power Authority.

12 MR. SPREHN: Good morning. My name is
13 Boyd Sprehn. I'm counsel to the Public Services
14 Commission. Seated with me is executive
15 director, Donald Cole, legal assistant, Tisean
16 Hendricks, and consultant, Jim Madan.

17 MS. THOMAS-GRIFFITH: Good morning.
18 Marie Thomas-Griffith. I'm here today as counsel
19 for the Water and Power Authority.

20 MR. HALL: My name is Samuel Hall and I'm
21 also counsel to the Water and Power Authority.
22 Here are the --

23 MR. KUPFER: Morning. Larry Kupfer,
24 executive director, Water and Power Authority.

25 MR. HALL: We have the present rate

1 consultant, Henry Thomas, and Murray Hamilton.

2 In addition, we have several WAPA employees here
3 who are basically backup in case we need them for
4 technical answers.

5 HEARING EXAMINER: So there are just two
6 housekeeping matters before we start. With
7 today's schedule, we have the public hearing in
8 St. Thomas that's scheduled -- I'm sorry,
9 St. John, that's scheduled to begin at 5:30 p.m.
10 It's my understanding that we would need to take
11 the 5:00 p.m. ferry over and that we should give
12 ourselves at least 45-minutes to get from here to
13 Red Hook. So, of course I don't want anyone
14 speeding to Red Hook, and I understand that the
15 traffic in St. Thomas can be overwhelming
16 sometimes. So what I am proposing is that we end
17 today's proceeding at 3:30. So that gives people
18 enough time to comfortably get over to Red Hook.
19 We will take a break for lunch and breaks as
20 necessary for everyone to stretch. I'd like to
21 get through as much as we can today, but we
22 really only have at best four hours of testimony
23 today unless we're volunteering to work through
24 lunch, which I'm fine with, but I will let
25 everyone else make that decision.

1 And then there was one other matter which
2 were the exhibits that were produced by the Water
3 and Power Authority yesterday and those would
4 be -- they're designated by letter, Exhibits A
5 through Y. There was an objection to the exhibits
6 by the PSC staff.

7 Attorney Sprehn, do you still have that
8 objection?

9 MR. SPREHN: We do object to the lateness
10 of the arrival of this list six days after the
11 deadline and immediately prior to the start of
12 this proceeding. That said, there are a few of
13 these that we have no specific objection to but
14 there are some we don't understand and some we
15 are adamantly opposed to. Do I need to go
16 through them one at a time?

17 HEARING EXAMINER: Which ones do you not
18 have any objections to?

19 MR. SPREHN: Items G, H, I, J, and K, as
20 well as O, P, Q and R. I note that on the
21 exhibit list I received, there are two documents
22 that do not have a letter attached to them, an
23 Alpine Energy agreement with WAPA and PSC
24 approval and a capital improvement plan,
25 near-term generation plan, we did not receive

1 those documents.

2 HEARING EXAMINER: I'm sorry, which
3 documents did you not receive?

4 MR. SPREHN: There's two that are on the
5 exhibit list, Alpine Energy.

6 HEARING EXAMINER: Which page are you on?

7 MR. SPREHN: They don't have a letter
8 attached to them.

9 MS. THOMAS-GRIFFITH: With respect to the
10 Alpine agreement, we would withdraw that at this
11 time. The other document is the near-term
12 generation plan. We will also withdraw that, but
13 we would ask the hearing examiner to take
14 judicial notice with respect to the Order, The
15 PSC Order that would have approved the Alpine
16 agreement -- Alpine Energy.

17 HEARING EXAMINER: Is there a copy of
18 that Order available?

19 MS. THOMAS-GRIFFITH: I don't have it
20 with me. I think that was a part of our
21 challenge in trying to identify that Order. It
22 is a part of the record here at the PSC. We will
23 take some time to identify and locate that
24 document, but it is a part of the record.

25 MR. SPREHN: I'm sorry, the Order

1 approving the Alpine agreement?

2 MR. THOMAS: The Order, exactly.

3 MR. SPREHN: You know which year that
4 was?

5 MS. THOMAS-GRIFFITH: We think it is
6 around 2014.

7 HEARING EXAMINER: Is someone from PSC
8 staff available to pull that Order? It doesn't
9 have to be right now.

10 MS. HENDRICKS: Yes.

11 HEARING EXAMINER: Okay, someone will
12 pull that Order.

13 Attorney Sprehn, which exhibits you have
14 objection to?

15 MR. SPREHN: Very firmly object to A, B,
16 C, D, E, and then I do not understand any
17 relevance to -- and object to item T. In short,
18 items A through E are not news articles. They
19 are op-ed pieces, non-expert, non-witness.

20 MS. THOMAS-GRIFFITH: That's T?

21 HEARING EXAMINER: Well, he's objecting.
22 PSC is objecting to A, B, C, D and E. All those
23 are articles -- are op-ed pieces, and then T
24 would be an another article about the
25 Legislature's rejection of the Alpine lease.

1 MR. SPREHN: It's more than that. It
2 contains a substantial op-ed piece.

3 HEARING EXAMINER: So -- and your
4 objection is relevance?

5 MR. SPREHN: Relevance, lack of
6 foundation, nonexpert testimony.

7 MS. THOMAS-GRIFFITH: So, in general, the
8 Authority provided these exhibits when it did
9 intending to respond to actually the belated
10 submission by the PSC's own production of its
11 exhibits. Although they mentioned and provided
12 us a list of exhibits on the call during the
13 prehearing conference on the 15th, we did not
14 actually receive most of their exhibits until the
15 17th. At that time -- there are exhibits that
16 have still not been produced and those would be
17 Exhibits No. 21 and 29, and 15 we cannot access.
18 It's in the drive but we cannot access.

19 HEARING EXAMINER: 21, 29 and 15?

20 MS. THOMAS-GRIFFITH: 21 and 29 are not
21 there at all. So at the point in time that the
22 PSC provided access to their own exhibits, they
23 were late. They were beyond the time established
24 by the hearing examiner pursuant to its Order for
25 the production of the exhibits.

1 WAPA, at that time, having gone through
2 the list of documents, realized that more than
3 half of their PSC exhibits were backwards looking.
4 They were providing many aspects of the history
5 related to the Water and Power Authority and we
6 felt at that time that if the PSC wanted to
7 orchestrate its presentation before this base rate
8 proceeding in a way that was not relevant to the
9 current period of time, not relevant to WAPA's
10 immediate request for relief but, in fact, to
11 provide this great breath of history, WAPA, in
12 turn, wanted to provide a context. And our
13 exhibits were designed to respond, then, to what
14 the PSC is putting forward in a belated way as its
15 exhibits.

16 But before we can even, to me, get to this
17 true discussion about whether WAPA's exhibits
18 were, in fact, late, I would ask the hearing
19 examiner to take note of the fact that when you
20 issued your Order, the original scheduling Order
21 on August 1st of 2009, included in that document
22 was a requirement that the PSC staff submit
23 testimony to WAPA to allow us to be appraised, if
24 you will, of who its witnesses would be, number
25 one, and two, what those witnesses would propose

1 to testify to as a part of this proceeding so that
2 we can be appropriately guided in identifying what
3 exhibits would be relevant to this process. I
4 would say that as of that date, as of
5 September 19, WAPA had not learned who PSC's
6 witnesses would be. We had not received any
7 prefiled testimony and, in fact, when we
8 participated in the prehearing conference on
9 October 15th, that was the first time we would
10 hear who PSC's witnesses would be, but we still
11 have not received any prefiled testimony.

12 It is our position, then, that if the PSC
13 continues or feels that it is objecting to WAPA's
14 exhibits produced in response to the exhibits we
15 received from the PSC, that the PSC really does
16 not or should not have an opportunity to present
17 witnesses at all having failed miserably to comply
18 with the hearing examiner's Order and provide WAPA
19 with the advance and proper notice as to who its
20 witnesses would be.

21 What we heard during that prehearing
22 conference was that they did not have testimony,
23 per se', but that witnesses would speak to
24 documents. Well, that's simply not the process
25 that was authorized by the hearing examiner.

1 That's not the process and the obligation that the
2 PSC had.

3 Our position, then, is that the PSC should
4 not be allowed to have any witnesses testifying
5 during these proceedings today. And with respect
6 to its exhibits, all exhibits produced to WAPA
7 beyond the deadline for their submission,
8 October 15th, should equally not be allowed.

9 WAPA was satisfied to rely on the exhibits
10 they produced well ahead of the deadline in
11 connection with its filing, filings that were made
12 on July 20th -- 30th of 2019, August 5th of 2019
13 and May 21 of 2019. WAPA was intent on relying on
14 those exhibits until, of course, we received the
15 belated submissions by the PSC last week Thursday.
16 That's our position.

17 HEARING EXAMINER: Attorney Sprehn, do
18 you want to respond?

19 MR. SPREHN: Yes, please.

20 HEARING EXAMINER: Okay, proceed.

21 MR. SPREHN: The Public Services
22 Commission has, indeed, reviewed as indicated on
23 our exhibit list three different sets of filings
24 in this matter made by the Water and Power
25 Authority. Those three different sets of filings

1 do not present the same argument as a basis of
2 relief. They do not present the same request for
3 relief.

4 This matter remained in some question as
5 to what it would be going forward and it has
6 proceeded in a somewhat unusual and urgent matter
7 with a very short deadline. A normal rate base
8 would have everything scheduled and would proceed
9 over a matter of months and weeks. This one has
10 been done in days. Consequently, we were left in
11 a position where we were, frankly, uncertain of
12 what we were responding to until very recently.

13 The PSC does not intend to present
14 opposition testimony, if you will, to the rate
15 case, and propose a different set of rate relief
16 which would be the normal testimony that would be
17 filed and countervailed.

18 The PSC believes that WAPA has failed to
19 demonstrate and adequately support its case. It
20 bears the burden of proof. We intend to cross
21 examine, and we do intend to put on a rebuttal
22 witness or two at the end, depending on the
23 testimony that is provided. We cannot provide who
24 the rebuttal testimony is until we go through the
25 cross examination.

1 As to the exhibits, we filed our notice of
2 exhibits on the day promised. At that hearing, we
3 said we would make available the next day. We did
4 not do it by the close of business. It was up by
5 the open of business the next morning. So those
6 exhibits have been made available. If we did not
7 get you Exhibits 21, 29 and 16, we will certainly
8 endeavor to do so today at the lunch break. I
9 note that Exhibit 29 is a WAPA produced document.
10 So that should have been something that WAPA had
11 all along. Can't be a surprise there, nor was
12 there anything in the process that said once we
13 did an exchange of exhibit list, that WAPA or the
14 PSC will be entitled to come up with a
15 countervailing new set of exhibits. So that was
16 simply not part of this process either. Again,
17 this has been an expedited proceeding in which we
18 are moving rapidly forward. We met our deadline
19 for providing notice and opportunity to know what
20 those were, and we, at a very quick pace, turned
21 that document production around. We think our
22 response was reasonable under the circumstances.

23 HEARING EXAMINER: Did the PSC and WAPA
24 meet and confer prior to producing their
25 respective witness list and exhibit list?

1 MR. THOMAS: That did not occur.

2 HEARING EXAMINER: So I'm just going to
3 address the concerns one by one, starting with
4 the easiest. As far as Exhibits 21 -- I have 21,
5 29 and 15 as missing. Is it 15 or 16?

6 MS. THOMAS-GRIFFITH: It is 15.

7 MR. SPREHN: Fifteen.

8 HEARING EXAMINER: Are those exhibits
9 that the PSC intends to use this morning before
10 lunch?

11 MR. SPREHN: No.

12 HEARING EXAMINER: So, the PSC will
13 provide to the Authority's counsel those
14 exhibits, hard copies.

15 Regarding the timing, this is an
16 abbreviated investigation, abbreviated at the
17 request of the Authority, from what I recall, in
18 the earlier conversations. When I was first
19 appointed as hearing examiner, there was a request
20 to make this proceeding as abbreviated as
21 possible.

22 In addition to this being an abbreviated
23 proceeding, it's my understanding that the typical
24 rules of evidence don't apply to these types of
25 proceedings. I think we're probably all

1 litigators in here, to some extent. We are all
2 very familiar with the rules of evidence, but they
3 don't apply. The purpose of really this
4 proceeding is to make sure that we have as
5 complete of a record as possible so that we can
6 have all the information that is available for me
7 to make my report and recommendations to the PSC
8 and for the PSC to make an ultimate decision. In
9 light of what the purpose of this proceeding
10 really is, I am going to accept not as -- not
11 admit into the record but I'm going to accept all
12 of the filings from the PSC and all of the filings
13 from the Authority, including the exhibits that
14 were produced by either the PSC or the Authority
15 after the prehearing conference.

16 The concern that I have, though, are with
17 exhibits, and this is the Authority's recently
18 submitted exhibits, with Exhibits A, B, C, D, E,
19 and 10. While the rules of evidence don't apply
20 to this proceeding, those exhibits are articles
21 mainly from the St. Thomas Source. And as
22 Attorney Sprehn explained, some of them are op-ed
23 pieces. It's not clear to me how the Authority --

24 MS. THOMAS-GRIFFITH: We're not clear
25 what Exhibit 10 is that you referred to.

1 HEARING EXAMINER: That will be a
2 St. Thomas Source article. So it's not clear how
3 these articles, because these articles would have
4 been authored by either individuals in the
5 community who may be reporters.

6 MS. THOMAS-GRIFFITH: They're authored by
7 someone who can be characterized as a member of
8 the public. They address matters that can be
9 confirmed through various aspects of the PSC's
10 own record through the historical data that
11 relates to the Water and Power Authority. We
12 believe that they are relevant in collaboration
13 with testimony that would come forward from
14 Mr. Kupfer, from the Authority's consultants,
15 Mr. Murray and Mr. Thomas. We believe that
16 together with that testimony, those articles
17 would help to provide a true historical context.
18 The only way we can provide for the historical
19 context in the way that we see the PSC seeking to
20 or endeavoring to pursue in this proceeding is to
21 provide the data that allows us to take a glimpse
22 back into that period of time. These articles do
23 a good job of addressing the history of WAPA over
24 a period of time not covered by any other
25 documents that we have here before us today.

1 HEARING EXAMINER: How can the newspaper
2 article or an op-ed piece, how can I, as the
3 hearing examiner, be sure that any information
4 contained in those articles are factual. It's
5 different than having one of the employees for
6 the Authority or experts testify as to facts.
7 How would I know that something that's published
8 in a newspaper or online newspaper is factual?

9 MS. THOMAS-GRIFFITH: I think, Madam
10 Hearing Examiner, your question goes to the
11 weight that those articles should appropriately
12 be given once they are accepted into the record.
13 In other words, it's no different than when an
14 individual from the public comes forward and
15 offer statements to the hearing examiner that
16 would be used or considered as a part of the
17 decision-making in these proceedings. It is a
18 matter for the hearing examiner to determine what
19 weight you should accord to the testimony that
20 comes forward from members of the public. And
21 the same is true with regard to these articles.
22 While we don't have a live body, the fact is that
23 these articles speak to a historical period of
24 time, and I don't hear the PSC saying that there
25 is any information contained in the articles with

1 which they disagree with or which is not
2 comporting with the factual record that they have
3 knowledge of. I think that's a different inquiry
4 that we could engage in. With respect to whether
5 the articles can appropriately be considered, I
6 would submit that they are analogous to the
7 statements coming forward from a member of public
8 who would sit before you and offer their thoughts
9 on various aspects of WAPA's history.

10 HEARING EXAMINER: But my concern with
11 that argument is this. If we have a member of
12 the public submit written testimony or come here
13 to testify, we know, one, that that member of the
14 public is testifying specifically to the petition
15 in this base rate case. If we were to treat
16 newspaper articles as testimony that should be
17 included in the record, then I think we open the
18 flood gates because if we're going to treat
19 newspaper articles as testimony, we've got to
20 collect every single newspaper article on the
21 subject matter to make sure we have an accurate
22 representation of how the public feels via
23 newspaper articles. And then if we start doing
24 that, we need to look at social media and take
25 all of those statements, and especially with the

1 online articles because people comment on those.
2 So if we're using the online article and treating
3 it the same way we would treat testimony from the
4 public, then we have to treat the comments to the
5 article, I think, as testimony from the public,
6 and then we've just opened this Pandora's box to
7 every single statement ever made being included
8 in this record. So the article -- if the article
9 is being used to somehow support or supplement a
10 factual statement from one of the witnesses or
11 one of the statements in the testimony that
12 you've submitted, then maybe we can hear it, but
13 if we're going to treat articles as if they're
14 public testimony, then we have to go and gather
15 every single article. It wouldn't be fair to
16 take a snippet of articles and then have that
17 constitute the public testimony.

18 MS. THOMAS-GRIFFITH: But Madam Hearing
19 Examiner, wouldn't that not be the duty and
20 responsibility of the opposing party to determine
21 how to engineer their case in order to respond to
22 evidence that we proffer? We believe that these
23 articles could be used by the Authority with
24 respect to rebuttal. They could be used by us
25 for cross examination purposes. If you close the

1 door, you effectively eliminate WAPA's ability to
2 proceed in a manner that's proper, appropriate
3 and consistent with your orders. I would also
4 say that --

5 HEARING EXAMINER: Let me just say this,
6 I'm not closing the door. What I'm saying,
7 though, is the basis for which you're seeking to
8 use the articles isn't going to work because I
9 can't use -- I definitely cannot use -- I think
10 we're looking at six or seven articles. I can't
11 use the articles and say I'm admitting them into
12 the record as public testimony to be treated as
13 we would treat any testimony from the public
14 because then if we do that, we're gonna have to
15 look at all the articles and look at all the
16 comments. We can't just use -- we can't just
17 hand pick and select certain articles and just
18 say this constitutes public testimony for the
19 record.

20 MS. THOMAS-GRIFFITH: Can I respond to
21 that specifically?

22 MR. SPREHN: May I get to respond to that
23 at some point?

24 HEARING EXAMINER: After she's finished.

25 MS. THOMAS-GRIFFITH: We have received

1 from the PSC last Thursday a list of 30 exhibits,
2 more than half of those exhibits hawking us back
3 to a period of time that's not before us today.
4 We have documents that are proposed here that go
5 back to 2012, 2008, 2015. I mean, they are of a
6 time and they relate in some instances to the
7 LEAC case, which is not this case, and they
8 should not appropriately come forward at all.
9 But the suggestion is that if they are going to
10 be allowed to come forward, then you open the
11 door to WAPA needing to also provide context
12 around every single discrete issue that those
13 documents raise. It's not that because you
14 accept or allow one party to present their case
15 in a particular way that you now, by extension,
16 must or create an obligation on the other party
17 to respond to each discrete issue by providing
18 every single document that it feels is relevant
19 on the issue. That's a matter of the party's
20 prerogative and that's what I suggest to these
21 articles. If the PSC feels that there are
22 documents that are germane to respond to what we
23 proffer within the context of the articles, it is
24 their prerogative to engineer their presentation
25 of the case as they deem appropriate, consistent

1 with responding to the articles that we would put
2 forward. That's true of us.

3 HEARING EXAMINER: But that doesn't
4 address my concern about the articles being
5 treated as testimony from the public. Now, the
6 argument you just made would assume that every
7 single exhibit that the PSC has proffered would
8 be admitted into evidence, and that's not the
9 case. I would anticipate that attorneys from
10 either side would make objections to evidence as
11 it's being offered and coming in. So, your
12 concern about the PSC's exhibits going back to
13 far in time and possibly, I guess, being
14 irrelevant would be an objection you would make
15 at that time and then we would hear the
16 objection. My concern with the articles, the
17 second argument you made was that it should be
18 treated as public testimony. And what I'm saying
19 right now is that's not gonna be persuasive
20 because if we're going to admit articles into the
21 record and say that these are admitted into the
22 record because they constitute public testimony,
23 then we would have an issue because we are not
24 admitting all of them. So that's my concern
25 about that. I'm gonna to let Attorney Sprehn

1 respond to that argument about the public
2 testimony only, and then I'll move on to the
3 other argument that you made.

4 MR. SPREHN: I first wanted to advise the
5 hearing examiner and WAPA and everyone present,
6 two of our staff advisers, Dan Stathos, does much
7 of our financial work and Larry Gawlik who has
8 been a generation adviser for many years are
9 unable to be here because of personal issues.
10 However, they wanted to be listening to this
11 proceeding and we have them on the telephone. So
12 I wanted to put that on the record now. They
13 called and asked if they could listen.

14 HEARING EXAMINER: Which telephone are
15 they on?

16 MR. SPREHN: It's on this one right here.

17 HEARING EXAMINER: On the cell phone?

18 MR. SPREHN: We just turned it on during
19 that last discussion because we received that
20 message. I just wanted to make that clear as
21 quickly as possible so if there is any objection,
22 I get that opportunity out now.

23 Responding to the immediate matters at
24 hand, I guess the first statement I have to say is
25 if these articles are to be admitted, we

1 absolutely object to the contents and statements
2 made within them. If they're offered for the
3 truth of those, we would be able to try these
4 articles and we don't want to go there, but we
5 have to if these are admitted as part of the
6 record. If my Pennington wishes to submit these
7 as public comment, she is free to do so. It's not
8 WAPA's job to submit public comment nor Ms.
9 Pennington is now an agent of WAPA, in which case
10 she is not an expert in this field. This is not
11 expert testimony. This is opinion from a
12 layperson about the history of WAPA. It is simply
13 not an appropriate subject for WAPA to bring this
14 as an exhibit.

15 HEARING EXAMINER: Okay. And then the
16 other argument that you raised, Attorney
17 Thomas-Griffith, was that based on what you --
18 based on your review of the exhibits and what you
19 anticipate the PSC will be offering as evidence
20 to be admitted into the record, you believe that
21 the PSC would be going back too far in time, one,
22 to the extent that some of those matters would be
23 irrelevant, two, and three, you didn't have prior
24 notice, so as far as the ability to prepare and
25 have notice. Okay.

1 So, those arguments, I understand, they're
2 more persuasive to me than the articles being
3 treated as public testimony, but what I'm
4 wondering is whether you have employees at your
5 disposal who can provide any context that you feel
6 you might need to rebut what the PSC does. Do you
7 have those employees available?

8 MS. THOMAS-GRIFFITH: So, a few things
9 about that. WAPA comes forward here today in a
10 proceeding that's very important to the
11 sustainability of the Authority. We have
12 prepared the witnesses that will offer their
13 testimony such that I don't see how the time
14 would allow itself for us to try matters going
15 back several years. We don't know why these
16 exhibits are being offered because the PSC has
17 not given us any prefiled testimony. They have
18 not made a proffer, which they should be
19 obligated to with respect to what they intend to
20 prove up on the exhibits. We are not here for a
21 compliance proceeding. We are not here for a
22 proceeding that says WAPA has failed to do any
23 number of things. We are not here for that
24 proceeding. We are here with respect to WAPA's
25 request for electric base rates. And so to the

1 extent that any of these documents going back in
2 time are an effort to litigate issues that the
3 PSC has with the Authority, we submit that it's
4 not proper and those exhibits should be excluded
5 out of hand without even the duty of WAPA to have
6 to get into them. For example, we have exhibits
7 here that relate squarely to the LEAC
8 proceedings, the rate financing mechanisms,
9 stipulations, the energy production plan. I
10 mean, some of these are -- it specifically says
11 Docket 289, which is the LEAC proceeding. Those
12 should not even be before us today or this week,
13 and we would ask that without us spending the
14 time and deviating from those issues that do need
15 to come forward fully on the record in the
16 limited time that we have, that those documents
17 be excluded, and we allow the Authority and the
18 PSC to respond and to present on the issues that
19 are germane to WAPA's request for base rate
20 relief.

21 HEARING EXAMINER: Does the PSC have a
22 response to that specific argument?

23 MR. SPREHN: Yes, most emphatically. As
24 we understand WAPA's most recent version of its
25 request for base rate, its request for base rates

1 is tied extensively to a tradeoff in rates on the
2 LEAC, and it is tied extensively to rates
3 associated with the Vitol project. The Vitol
4 project was approved for the original amount of
5 87 million and infrastructure costs on a
6 five-year payback, and for \$5 million per year in
7 operations and maintenance expenses in the LEAC
8 docket. It was done at that time before being
9 transferred to base rates. So, the history of
10 that project is in the LEAC docket.

11 The LEAC docket in the RFM also relates to
12 the maintenance expenses that were being
13 supplemented because WAPA's prior base rates have
14 maintenance issues, and those issues continue
15 forward through today, and the instruments we will
16 be looking at in WAPA's budget presentation.

17 So, we are not trying to retry the LEAC.
18 We are taking those sections in the LEAC that are
19 directly and applicably go to the base rates that
20 have been moved to base rates at the present time.
21 We will be happy to demonstrate that when those
22 documents become relevant.

23 HEARING EXAMINER: And what was the time
24 period of that LEAC matter?

25 MR. SPREHN: From 2012 to 2017.

1 HEARING EXAMINER: So --

2 MS. THOMAS-GRIFFITH: The problem here is
3 that we don't have testimony. Attorney Sprehn,
4 clearly his statements are in response to the
5 filings made by the Authority in connection with
6 the petitions that it filed that has us here
7 today. On that basis, then, the PSC had the
8 opportunity and certainly were constrained by the
9 orders of the hearing examiner to provide to us
10 prefiled testimony alerting WAPA to the manner in
11 which it is intends to present its witnesses. It
12 didn't do that. What I hear is its counsel
13 making statements that are not appropriate
14 because they're in the way of testimony, and that
15 should be stricken. And what is being proposed,
16 then, is that somehow the PSC's witnesses are
17 going to come before us and orchestrate
18 presentations that are designed to explain what
19 these documents mean, and how intricately they
20 are woven into WAPA's request for base rate
21 relief. Well, that is precisely the kind of
22 thing that we would see in prefiled testimony
23 that we do not have. And so we go back again to
24 the fact that we are here today on day one of
25 these proceedings when both the hearing examiner

1 and WAPA should have before it the path within
2 which we would be pursuing to address these
3 important issues. You have WAPA's information.
4 We don't have the PSC's.

5 HEARING EXAMINER: But here's the problem
6 that I'm having. When I was originally appointed
7 to this matter and we had teleconferences for
8 purposes of determining the schedule, the
9 Authority made clear that they wanted this base
10 rate case treated on an expedited basis. We
11 would agree -- all of us would agree that that
12 was the Authority's --

13 MR. HALL: We were promised an expedited
14 hearing.

15 HEARING EXAMINER: Okay. So -- and in
16 fact, the Authority wanted it to be expedited
17 even more than it was ultimately expedited,
18 correct? And there came a time where, I think,
19 the PSC moved to postpone the hearing and the
20 Authority then objected, correct?

21 MR. SPREHN: Correct.

22 HEARING EXAMINER: So, this is my
23 concern. Built into the scheduling order, and I
24 was very careful on this, I built in several
25 opportunities for PSC and Authority to confer. I

1 built in several opportunities for the PSC and
2 the Authority to discuss any discovery disputes
3 that they may have had. Even the section of the
4 most recent scheduling order regarding the
5 prehearing conference, I even included language
6 that said I encourage the PSC and the Authority
7 to meet and confer. When we got to the
8 prehearing conference last week and inquired as
9 to whether there was a meet and confer, the
10 response was, no. When we were at the prehearing
11 conference last week, I inquired as to whether
12 there was a discovery dispute. The response was
13 no. Even after the prehearing conference, I
14 didn't receive anything from the Authority saying
15 now that we've had an opportunity to view the
16 exhibits from the PSC, we either have objections
17 or we're going to need a continuance of the
18 hearing because we feel like we were being
19 ambushed or there are matters referenced in the
20 exhibits for which we need a complete record and,
21 therefore, we request that the PSC also produce
22 these other documents. The concern that I'm
23 having is that we've set aside this week to
24 address this matter, and this morning is the very
25 first time that the Authority has said that it's

1 feeling, and I don't want to put words in your
2 mouth, summarizing what you said, this is the
3 first time that the Authority has said that it's
4 feeling ambushed. That's fair? Is my statement
5 fair?

6 MS. THOMAS-GRIFFITH: What's fair is that
7 only two business days ago, the Authority
8 received the 30 exhibits from the PSC. That's
9 what's factual.

10 HEARING EXAMINER: And the following
11 morning after the prehearing conference you saw
12 the exhibits. You sent me the filing regarding
13 the presentation by e-mail on Saturday. I
14 responded to that e-mail right away. I've been
15 very, in my opinion, which you could disagree,
16 anyone, very responsive to make sure that this
17 abbreviated process is as fair as possible to the
18 PSC, the Authority and the public. So what's
19 happening now is I'm not even sure what the
20 request is right now. I don't know if there is a
21 request to exclude certain exhibits from the PSC.
22 I'm not -- I don't know if you're requesting
23 additional time to explore certain matters, but I
24 do feel that had the spirit of my orders been
25 complied with, that the PSC and the Authority

1 would have been speaking to each other throughout
2 this entire process so that when we get to the
3 evidentiary hearing and the public hearings, that
4 it would be as seamless as possible. I don't
5 want to be put in a position as a hearing
6 examiner where I'm restricting information from
7 the PSC or the Authority, and if I were to
8 restrict information from the PSC, it could be
9 argued that I am restricting information from the
10 public, right, because the PSC, to some extent,
11 has to balance the impact of a base rate increase
12 on taxpayers against the needs of the Authority.
13 So, in my effort to be fair and make sure I was
14 fair, I issued the scheduling order. I even
15 issued an order asking the PSC and the Authority
16 to come up with their own agreed upon Order, and
17 you weren't able to agree. So now what's
18 happening, I am being put in a position at the
19 start of the evidentiary hearing to delve in and
20 determine which exhibits from the PSC should be
21 excluded when there hasn't been an objection made
22 until this morning.

23 MR. THOMAS: Well, we actually made the
24 objection in the filing of our exhibits when we
25 had an opportunity at that point to go through

1 the 30 exhibits we received from the PSC, or the
2 ones that we did receive, and we had a chance to
3 speak to the various persons within WAPA,
4 determine what documents would be appropriate
5 exhibits in response to what we saw on the PSC's
6 list, and then in compiling that, by the time we
7 concluded that process, because we didn't get
8 anything from the PSC until last week Thursday,
9 we produced what we had to you on Sunday. In the
10 context of our submission, we did say that WAPA
11 objects to PSC's exhibits.

12 HEARING EXAMINER: So this was yesterday?

13 MS. THOMAS-GRIFFITH: This was Sunday.

14 HEARING EXAMINER: So what I need to know
15 now, does the Authority want to proceed with the
16 evidentiary hearing this week?

17 MS. THOMAS-GRIFFITH: Yes. We believe
18 that the viability of WAPA is at stake, and so
19 for us, there is really no choice. There is
20 really no choice but to proceed, although the
21 PSC, we feel, has put us in a position that is
22 unfair. They haven't given us what your Order
23 required in the way of prefiled testimony. They
24 gave us documents late.

25 HEARING EXAMINER: Did you ask them for

1 the testimony?

2 MS. THOMAS-GRIFFITH: I did not. I don't
3 know whether internally there was a request for
4 that, but it's in the Order.

5 HEARING EXAMINER: But prior to today,
6 did the Authority request of the PSC any
7 compliance with the Order that I issued or any
8 written testimony so they could be prepared for
9 the hearing?

10 MR. HALL: I could certainly speak to
11 that. I've been at this over 40 years in
12 connection with serving on the PSC or
13 representing WAPA, we've never had a situation
14 before where both sides hadn't filed prefiled
15 testimony, at least to my recollection. It has
16 been a standard practice. The Authority files
17 prefiled testimony and the PSC responds
18 similarly. So we were faced with a situation
19 where there was no prefiled testimony. There was
20 no declaration of witnesses. Only declaration of
21 exhibits, which we then decided the appropriate
22 course of action was to, well, if these are
23 allowed, we should be allowed the opportunity to
24 respond in rebuttal with what we could find. So
25 that's what we did, and that's the course of

1 action that we took given this very unusual
2 situation.

3 HEARING EXAMINER: When is the October
4 hearing, Mr. Cole? When is the October hearing
5 scheduled?

6 MR. COLE: October?

7 HEARING EXAMINER: I'm sorry, it's
8 November. My apologies.

9 MR. COLE: It's November 12, but based on
10 your Order, you would submit back to the 15th.
11 So definitely it's not going to be on the 12th.
12 More than likely it's gonna be December 3rd.

13 HEARING EXAMINER: And the request, the
14 current request from the Authority is that should
15 there be a base rate increase, that it goes into
16 effect at the end of December?

17 MR. HALL: Correct, beginning of January.

18 HEARING EXAMINER: Okay. So these are
19 the options that are presented. The Authority
20 has a couple options at their disposal. There
21 could be a brief continuance of this hearing to
22 the extent that the Authority wants to receive
23 any testimony from the PSC in order to proceed,
24 or the Authority can submit a list of items that
25 it needs from the dockets -- the other dockets

1 that are referenced in the PSC's exhibits. So if
2 there are other items within the docket, within
3 the record of the PSC that the Authority feels
4 that it needs to counter any cross examination
5 from the PSC, because what I'm hearing is the PSC
6 is not calling witnesses or doesn't anticipate
7 calling witnesses. Is that correct, Attorney
8 Sprehn?

9 MR. SPREHN: We do not intend to call
10 witnesses in its case-in-chief. Depending on the
11 cross examination, we may have rebuttal, but that
12 would be the only witnesses we intend to put on.

13 HEARING EXAMINER: So, the Authority
14 could request any supplemental information from
15 the dockets that are referenced in the PSC's
16 exhibits, or we could proceed and both sides
17 object to the evidence as it's offered. I think
18 that will -- based on what I'm hearing, there's
19 gonna be a lot of objections, and there's going
20 to be a lot of delay, but both sides could object
21 to evidence as they're offered. My concern is
22 that what I have gleaned from the proceedings so
23 far and the exchanges between the Authority,
24 through its counsel, the PSC through its counsel
25 and myself, is that the PSC's counsel, at least,

1 or PSC staff is of the mindset that some of the
2 relief that's being requested in this base rate
3 filing has already been provided through prior
4 proceedings. Is that an accurate summary of at
5 least part of the position that PSC staff has
6 taken?

7 MR. SPREHN: Some of the relief has been
8 provided previously, and that some of the relief
9 has been denied previously, and that there is a
10 track record that is relevant forward
11 projections.

12 HEARING EXAMINER: So with regards to the
13 PSC's position for now, at least for now for
14 purposes of this discussion, that some of the
15 relief that's being requested in this base rate
16 case has previously been provided where there
17 were prior presentations that were denied for
18 whatever reason, I would believe that any
19 previous relief that may have been granted in
20 prior proceedings that's now being requested in
21 this proceeding would be relevant. So I am not
22 going to stop the PSC from seeking to admit into
23 the record any records or documents or evidence
24 from prior proceedings that show that this relief
25 has already been granted. So, to that extent, if

1 the Authority believes that it needs more
2 information from the record, we can suspend the
3 proceedings for a few hours to allow the
4 Authority to get that information, or like I
5 said, we could continue this hearing, because
6 from what I understand, it's not going to -- this
7 issue is not going to be considered by the PSC
8 until December 3rd.

9 MR. HALL: If I may respond. I think we
10 want to proceed. I believe what we would like to
11 do is try to convince you through our testimony
12 that your focus should be on what is referred to
13 as the test year, which has to do with maybe some
14 historical information, but in a very limited way
15 and projections going forward, and to convince
16 you that we don't need to go back through this
17 history of the dealings between the PSC and the
18 Authority. And if we're successful in doing
19 that, then I think we should be able to keep this
20 proceeding --

21 HEARING EXAMINER: Agree, but I will say
22 this, to the extent that the PSC staff
23 establishes that some of the relief that's being
24 requested in this base rate case has previously
25 been provided, I am going to allow them the

1 opportunity to present that in detail, and the
2 reason for that is because if that is, indeed,
3 true, then the ratepayers have already paid for
4 some of what you're seeking, and that's something
5 that I believe needs to be considered.

6 MR. HALL: Understood. We have no
7 objection to that, and I think we will dispute
8 some of that, but that's an exception that's
9 clearly understood.

10 HEARING EXAMINER: So, I am not going to
11 exclude any exhibits at this point, including the
12 articles, but you do understand that I have
13 concerns about whether those can be admitted.
14 Okay. So we'll start with opening statements.
15 Can we have the Authority?

16 MR. HALL: Yes. We are prepared to
17 proceed. If I could just inquire about the
18 telephone. Is it all right for the Authority's
19 employees to make -- give others the opportunity
20 to listen in via their phones?

21 HEARING EXAMINER: Sure. That's fine.

22 MR. SPREHN: No objection from us.

23 HEARING EXAMINER: With that, my
24 Mr. Kupfer is going to make an opening statement.

25 MR. KUPFER: You distributed the

1 testimony? Okay.

2 So, good morning. I would like to make --
3 to offer some remarks on the matter before us
4 today, the Authority's petition for new permanent
5 base rate covering all classes of customers.

6 The last permanent base rates were
7 approved by the PSC in February of 2017 based on
8 projected revenues and expenses for fiscal year
9 2017. As a reminder, fiscal year 2017 ended on
10 June 30th, 2017, and was the last fiscal year
11 before the impact of devastating hurricanes Irma
12 and Maria in September of 2017.

13 The Authority is sympathetic to the impact
14 that rate increases have on our community and has
15 made any every attempt to minimize the requested
16 permanent base rates.

17 Additionally, as will be discussed below
18 when coupled with the LEAC petition currently
19 before the PSC and the elimination of our
20 temporary leased generation surcharge, our
21 proposed permanent base rates will not
22 significantly impact the overall rates paid by our
23 customers.

24 First, let me address the need for new
25 permanent base rates. Simply stated, the

1 Authority's currently approved permanent base
2 rates do not provide enough revenues to cover our
3 fixed expenses. These fixed expenses include
4 payroll, routine operating expenses, maintenance,
5 contracted services and debt service.

6 In the Authority's opinion, the
7 examination of a base rate petition should be a
8 relatively straight-forward process as it simply
9 requires the examination of the revenues and
10 expenses forecasted for a test year, which in this
11 case is fiscal year 2020.

12 The examination of a base rate petition
13 does not require review of 20-plus years of
14 decisions made by the Authority in the Monday
15 morning quarterbacking of same. Furthermore,
16 these distractions divert the focus of this
17 evidentiary hearing in the base rate petition
18 under consideration.

19 With that in mind, I would like to speak
20 to the main determining factors in our base rate
21 petition, projected revenues and expenses. The
22 next three sections I will be referring to, Table
23 I, which is page 7 of my testimony, fiscal year
24 2020 sales are forecasted to be 523-megawatt
25 hours. This is in line with sales for fiscal year

1 2019. Fiscal year 2017 projected sales, the basis
2 for the last approved permanent base rates were
3 forecasted to be 641-megawatt hours. Therefore,
4 fiscal year 2020 sales are projected to be
5 18.6 percent lower than the sales used to
6 determine our last approved permanent base rates.

7 The Authority believes that the majority
8 of these lower sales are due to the hurricanes of
9 2017 and the continued impact on the economy of
10 the U.S. Virgin Islands.

11 At our currently approved permanent base
12 rates, the Authority projects revenues of
13 \$119 million for fiscal year 2020. This is
14 \$24 million lower than the revenues generated in
15 our last approved permanent rate case.

16 In this evidentiary hearing, we will no
17 doubt hear testimony that the Authority should be
18 responsible for the impact of these lower sales
19 and should not be able to recover cost based on
20 these lower sales. The Authority believes
21 strongly that there is no regulatory basis for
22 denying a municipal utility the ability to set its
23 rate based on expected sales.

24 Additionally, in this hearing, we will
25 undoubtedly hear about the fair of increased rates

1 and their potential impact on sales, volumes and
2 revenues. I need to be clear here, when coupled
3 with the LEAC petition currently before the PSC
4 and the elimination of our temporary leased
5 generation surcharge, our proposed permanent rates
6 will not significantly impact the overall rates
7 paid by our customers.

8 I would now like to make some remarks
9 related to our expense forecast for fiscal year
10 for 2020. When I look at expenses, I separate
11 them into what I call controllable and contracted
12 expenses. Controllable expenses cover such items
13 as payroll, travel, training, maintenance,
14 material, supplies, and as these expenses are
15 generally not covered by contract, the Authority
16 has some discretion over them.

17 Fiscal year 2020 controllable expenses are
18 \$59.3 million. This is \$1.1 million lower than
19 the controllable expenses included in our last
20 approved permanent base rate case.

21 The Authority has done an excellent job in
22 controlling these expenses over the last three
23 years. Contracted expenses include fixed and
24 defined services provided by third-party vendors
25 and debt service. Major third-party vendors

1 include Vitol for propane, Glencore for 2 oil, APR
2 energy for leased generators in St. Thomas and
3 Aggreko for leased generators in St. Croix.
4 Failure to pay a third-party vendor will result in
5 that vendor suspending or canceling their contract
6 with the Authority.

7 Fiscal year 2020 contract expenses are
8 forecast to be \$90.9 million. This is
9 \$18.2 million higher than the contracted expenses
10 included in our last approved permanent rate case.

11 This increase is primarily due to an
12 increase in leased generation cost of
13 12.9 million, 5.8 million in Vitol cost and
14 4.4 million in debt service.

15 In this evidentiary hearing, we will no
16 doubt hear about the unreasonableness of our
17 expenses or that our expenses are not prudent. In
18 my opinion, these statements are simply cop-outs
19 and we look forward to seeing the evidence to
20 support such statements. Such evidence should
21 include benchmarking against similarly situated
22 U.S. based municipal utilities serving 55,000
23 customers in two remote and non-interconnected
24 island districts.

25 Our operating expenses have been legally

1 procured and have been duly approved by our board
2 of directors and we look forward to providing
3 further testimony and rebuttal related to them.

4 The combination of a revenue shortfall of
5 24.2 million and an expense increase of
6 17.1 million results in a deficit of 40.3 million
7 as compared to the last approved base rate case.

8 As stated before, the Authority is
9 sensitive to the impact of rate increases to the
10 economy and is willing to forego internally
11 generated funding to cover miscellaneous capital
12 projects, which includes major maintenance to our
13 existing gas turbines and, therefore, is
14 requesting \$30.4 million in rates to eliminate its
15 deficit.

16 On average, this represents an increase of
17 approximately 6-cents per kilowatt hour. However,
18 as mentioned earlier, with the ultimate approval
19 of our current LEAC petition and the elimination
20 of the 3-cent per kilowatt hour lease generation
21 surcharge, overall rates for our customers will
22 not be significantly impacted.

23 The failure to receive the rate relief
24 sought under our base rate petition will mean that
25 our revenues will not cover our fixed expenses.

1 This would likely result in our inability to pay
2 one of our third-party service providers and a
3 suspension of services by that third-party
4 provider.

5 Vitol is the vendor that is applying the
6 most pressure to stay current and to deal with the
7 significant amounts owed to them, and a suspension
8 of propane deliveries would require the Authority
9 to switch back to 2 oil for oil generating needs.
10 This would result in an increase of LEAC from our
11 currently approved 19-cents per kilowatt hour to
12 30-cents per kilowatt hour.

13 In terms of overall rates, customers would
14 see an increase of approximately 7-cents per
15 kilowatt hour, about \$28 per month for an average
16 residential customer.

17 The Authority understands the impact that
18 such a significant rate increase would have on our
19 customers in the territory and is working
20 diligently to minimize this possibility.

21 The failure to receive the rate relief
22 sought under our base rate petition will also
23 impact our ability to complete the financing for
24 the recently commissioned Wartsila generators and
25 a potential refinancing of the LPG facilities with

1 a private investor.

2 The refinancing of the LPG facilities will
3 lower rates by 2-cents a kilowatt hour.

4 Furthermore, we are operating our new Wartsila
5 generators under a forbearance with Wartsilas, the
6 terms of which requires us to complete this
7 financing by December 31, 2019.

8 Lastly, the failure to receive the rate
9 relief sought under our base rate petition will if
10 every other scenarios outlined above become a
11 reality likely lead to further downgrades by the
12 rating agencies.

13 I would like to close my remarks today by
14 discussing the Authority's transformation plan.
15 Although not directly tied to our base rate
16 petition, the plan's success is dependent upon
17 approving the Authority's financial stability.
18 Without financial stability, it is likely that the
19 Authority would have difficulty attracting bidders
20 to implement the projects included in the plan.

21 Additionally, it would bring into question
22 the Authority's capacity to manage the federal
23 grants that had been awarded, or may be awarded to
24 the Authority.

25 Following the hurricanes of 2017, the

1 federal government, through the Federal Emergency
2 Management Association, FEMA, and the Department
3 of Housing and Urban Development, HUD, have made
4 funding available for restoration and recovery of
5 the Virgin Islands, including the electrical
6 utility sector.

7 Unlike recovery from previous disasters,
8 the federal government has authorized funding of
9 projects that improve infrastructure. As a
10 result, the Authority will be to significantly
11 transform itself over the next five years. This
12 transformation will be from a utility with extreme
13 exposure to catastrophic storm events, little use
14 of renewable resources and inefficient and
15 unreliable generation to a utility that has a
16 hardened transmission and distribution,
17 significant use of renewable energy and efficient
18 and reliable generation.

19 WAPA's transformation plan has three key
20 elements. One, improve resiliency. The first key
21 component is mitigation projects funded by FEMA
22 and HUD. HUD will be providing the 10 percent
23 local match.

24 FEMA has approved over \$600 million in
25 projects to harden our transmission and

1 distribution system. This includes \$400 million
2 for underground circuits to approximately
3 50 percent of our customers. Composite poles,
4 rated to withstand 200-mile an hour winds will be
5 installed for a significant portion of circuits
6 that will remain overhead. The project -- the
7 approved projects also include substation
8 upgrades, AMI hardening and submarine cables for
9 improved resiliency.

10 I think it is important to note that the
11 Authority is progressing and spending money in all
12 of those areas. Engineering for underground
13 projects is underway. The composite pole project
14 is proceeding throughout the territory with Water
15 Island having recently been completed.

16 Additionally, the Authority recently
17 started construction of a concrete reinforced
18 substation to replace our east end substation here
19 in St. Thomas.

20 Number two, greater renewable penetration.
21 The second main component of our transformation
22 plan involves greater use of renewable energy.
23 Currently, the Authority buys solar power under a
24 PPA with BMR Energy in St. Croix. This solar farm
25 produces about 600,000-kilowatt hours of

1 electricity each month. This represents only one
2 and a half percent of the electricity produced by
3 the Authority each month.

4 Using HUD grants, the Authority will
5 significantly increase the use of utility scale
6 WAPA-owned solar and wind generation. Batteries
7 will also be included in these projects to lessen
8 the impact that swing and renewables could have on
9 WAPA's grid.

10 The Authority is currently in the
11 application process to obtain funding for the
12 installation of 28-megawatts of utility-owned
13 solar, along with battery energy storage system
14 for the island of St. Croix.

15 The Authority has also reached an
16 agreement with a private entity to rebuild the
17 Donoe Solar Farm with an increased capacity of
18 6-megawatts.

19 Additional grant projects are in the
20 pipeline and are at varying stages of development.
21 Through the reduction in fuel usage and less
22 reliance on costly power purchase agreements, the
23 Authority will be in a position to make steady
24 progress providing its services at rates that are
25 far more stable and affordable.

1 Number three, improved generation. The
2 third component of our transformation plan is to
3 complete the upgrades of our power plants.

4 The Authority's 2016 Integrated Resources
5 plan or IRP calls for completely upgrading both
6 our power plants with smaller, more efficient,
7 more reliable and renewable compatible generators
8 that would use clean burning propane as the
9 primary fuel.

10 Recently, the Authority commissioned
11 21-megawatts of new WAPA-owned generation in
12 St. Thomas and 21-megawatts of new leased
13 generation in St. Croix. These generators are of
14 the type that were called for in our 2016 IRP, and
15 that means that today over 50 percent of WAPA's
16 electrical generation has been upgraded as
17 promised. The future is here.

18 WAPA will complete the upgrade of both of
19 its plants using HUD funds. And just have
20 recently WAPA released an RFP for up to
21 40-megawatts of new generation and battery storage
22 for St. Thomas that will be funded by HUD. It is
23 expected that these new generators can be in place
24 by the end of next year and they will allow us to
25 reduce rates by an estimated 5-cents per kilowatt

1 hour.

2 The Authority recognizes the need to pull
3 additional resource to help manage and monitor the
4 timely and accurate execution of this
5 transformation plan. As such, the Authority will
6 rely on external project and construction
7 management expertise, and has already begun
8 preparing RFPs for project management services
9 contracts.

10 From a portfolio management perspective,
11 the Authority is receiving assistance from the New
12 York Power Authority to develop a five-year
13 execution plan, which identifies all capital
14 projects, cost estimates, execution timelines and
15 funding sources.

16 Additionally, in order to successfully
17 implement such a large set of complex and
18 inter-related projects, the Authority recognizes
19 the importance of a reliable design which
20 optimizes the synergistic benefits of all the
21 system components.

22 Through the Department of Energy, the
23 Authority has access to the National Renewable
24 Energy Lab or Enrel, as it's referred to. Enrel
25 utilizing sophisticated state-of-the-art

1 technology has the capability of modeling these
2 proposed projects in order to validate their
3 effectiveness and viability prior to
4 implementation.

5 What this means is that before a shovel
6 breaks ground, all stakeholders can be assured
7 that the projects will function as anticipated and
8 will result in realization of the intended
9 benefits.

10 Additionally, assistance from the New York
11 Power Authority and other consultation and
12 engineering service experts will help to ensure
13 that designs are well thought out and properly
14 vetted prior to implementation.

15 The Authority is currently developing a
16 revised IRP in conjunction with the above named
17 technical resources, and it is expected to be
18 available in the fourth quarter of the year. This
19 IRP will provide complete definition of the
20 renewable and generation plan for the territory.
21 We will review this revised IRP with the PSC when
22 it is available.

23 In closing, I must state that in our
24 opinion the plan presented, herein, is the
25 soundest plan to lowering rates and improving

1 resiliency and reliability.

2 This concludes my remarks and the
3 Authority is prepared to proceed with this
4 evidentiary hearing as scheduled. Thank you.

5 HEARING EXAMINER: Thank you. Thank you
6 for providing the testimony in writing as well.

7 MR. HALL: Attorney Walker, I believe
8 with respect to the written testimony that was
9 filed prior to today, that it is customary for
10 the witness to affirm under oath that it reflects
11 it's accurate to the best of his knowledge.

12 HEARING EXAMINER: But will the witness
13 be testifying ultimately?

14 MR. HALL: Mr. Kupfer, yes. I am ready
15 to proceed with that now.

16 HEARING EXAMINER: Well, I think there is
17 an opening from PSC staff as well.

18 MR. HALL: Oh, I see. Okay.

19 HEARING EXAMINER: Once after both
20 openings are finished and we call the witnesses,
21 we can do that then. Mr. Kupfer can remain there
22 if he likes. You will deliver your opening from
23 there?

24 MR. SPREHN: Fine with me. Good morning.
25 The Public Services Commission is required to

1 conduct an investigation into the Water and Power
2 Authority's rates and services no less than once
3 every five years. The Commission has
4 jurisdiction over customer service issues, is
5 required to set the rates for the Authority as it
6 would for any other utility.

7 The Commission has specifically directed
8 that certain matters must be addressed in
9 reviewing the rates of the Authority.

10 One, any increase in the rates must
11 address whether such an increase is likely to
12 result in the additional revenue sought and if the
13 increase is likely to continue or worsen the loss
14 of sales of the electricity.

15 Two, the Commission has directed propane
16 as a primary fuel source of energy for electrical
17 generation. Diesel or fuel oil is permitted for
18 start-up and where circumstances are beyond the
19 control of the Authority.

20 HEARING EXAMINER: I'm sorry, slow down.
21 Go back to one.

22 MR. SPREHN: One, any increase in rates
23 must address whether such an increase is likely
24 to result in additional revenue sought and if the
25 increase is likely to continue or worsen the loss

1 of sales of electricity.

2 Two, the use of propane is directed as a
3 primary source of energy for electrical
4 generation. Diesel or fuel oil is permitted for
5 start-up and where circumstances are beyond the
6 control of the Authority. If the use of diesel is
7 more effective -- cost-effective than propane, the
8 burden of proof is on the Authority.

9 Three, the Vitol propane conversion
10 project has been approved only in the original
11 contracted amount of 87 million and with a
12 five-year recovery period, and that sum has been
13 included in base rates, along with an annual
14 operation and maintenance charge of 5 million.

15 Despite numerous hearings and discovery
16 requests between 2014 and 2017, neither the First
17 Amendment to that agreement changing the contract
18 amount to \$150 million nor the Second Amendment
19 further raising it to 160 million and to an annual
20 operation and maintenance budget in excess of
21 8 million have been approved as reasonable nor
22 prudent by this Commission.

23 As noted earlier, WAPA has filed several
24 different petitions in this matter with differing
25 requests in rates. We now understand that the

1 current rate request is for an increase of 34 -- I
2 believe it was .6 million from Mr. Kupfer's
3 opening in increased base rates. That is linked
4 to a decrease in the LEAC rate in order to
5 minimize impact on the ratepayers.

6 We understand that this rate increase is
7 to provide payment to the full amount of Vitol and
8 to possibly implicate a refinancing of the Vitol
9 LPG agreement on terms which have not yet been
10 made clear.

11 WAPA has discussed here a new
12 transformation plan. That transformation plan
13 addresses items that are funded through FEMA and
14 HUD. It has very little of it directly financed
15 through base rates. However, some of the issues
16 that are addressed through the base rate
17 proceeding, again, include the Vitol contract and
18 the Wartsilas and that implicates gas tax funding
19 as well.

20 Issues created and pending from WAPA
21 include its cash flow, its ability to make its
22 payments when due, its ability to meet its
23 long-term and short-term debt obligations, its
24 credit worthiness and its ability to access
25 working capital. All of these issues have a

1 burden of proof on the Water and Power Authority.
2 We will be testing and examining information
3 submitted, the projects proposed and the rates to
4 be requested.

5 Thank you.

6 HEARING EXAMINER: In your opening,
7 Attorney Sprehn, you referenced that neither the
8 First or Second Amendment to the Vitol contract
9 have been approved by the PSC?

10 MR. SPREHN: That is correct.

11 HEARING EXAMINER: And what are the
12 docket numbers for those?

13 MR. SPREHN: That was examined in both 89
14 and 651.

15 HEARING EXAMINER: Do you have the orders
16 that the PSC issued?

17 MR. SPREHN: I can locate those for you.

18 HEARING EXAMINER: And is there a
19 transcript associated with those proceedings?

20 MR. SPREHN: Absolutely, yes.

21 HEARING EXAMINER: Are the transcripts
22 here, a copy of them?

23 MR. SPREHN: It's available. I don't
24 know if I could lay my hands on them in the next
25 couple hours, but I'm sure we could over night

1 find that transcript or transcripts.

2 HEARING EXAMINER: So, I am going to ask
3 that you provide to both WAPA and myself the
4 Orders from those proceedings as well as the
5 transcripts.

6 MR. SPREHN: The transcripts will be
7 several. It was discussed at multiple meetings.

8 HEARING EXAMINER: The excerpts from the
9 transcripts could be provided or identified?

10 MR. SPREHN: I could certainly identify
11 -- probably would be quickest to provide you with
12 electronic copies and try to identify the page
13 ranges.

14 HEARING EXAMINER: That's fine. If we
15 can do that for tomorrow morning. That's fine
16 with the Authority?

17 MR. HALL: Yes.

18 MR. SPREHN: Could we have a five-minute
19 break before we move into testimony?

20 HEARING EXAMINER: Sure. So we'll break
21 for five minutes.

22 [Brief recess.]

23 [Proceedings resumed.]

24 HEARING EXAMINER: Back on the record.
25 So WAPA, you could begin.

1 MR. HALL: May I have the witness sworn?

2 **LAWRENCE KUPFER,**

3 called as a witness, having been first duly sworn,

4 testified on his oath as follows:

5 **DIRECT EXAMINATION**

6 By Mr. Hall:

7 MR. HALL: State your name for the
8 record.

9 MR. KUPFER: Lawrence Kupfer.

10 MR. HALL: And you're the CEO of the
11 Water and Power Authority?

12 MR. KUPFER: Correct.

13 MR. HALL: And you have submitted written
14 testimony in this docket prior to today?

15 MR. KUPFER: Yes.

16 MR. HLL: And read an opening statement
17 this morning which is sketched in testimony. Can
18 you tell us whether that statement in your prior
19 written testimony is true and correct to the best
20 of your knowledge?

21 MR. KUPFER: Yes, both are.

22 MR. HALL: In addition to your testimony
23 that you've submitted, is there anything that you
24 wish to elaborate on? In that regard, we have
25 marked as Exhibit F, which is attached to your

1 written testimony.

2 (Deposition Exhibit Letter FF was
3 marked for identification.)

4 MR. KUPFER: This was my table, Table I
5 in my testimony and I think it's an important
6 exhibit and I'm sure we will spend a lot of time
7 talking about it, but I think it presents clearly
8 in black and white what we received rates on last
9 time, what we're requesting rates on now, what
10 the differences are and what the differences are
11 due to. So we're prepared to discuss it in
12 detail as the proceedings progress.

13 MR. HALL: You've heard the opening
14 statement of Mr. Sprehn?

15 MR. KUPFER: Yes.

16 MR. HALL: You mentioned a number of
17 issues and concerns that PSC had. Would you like
18 to address any one of them in particular?

19 MR. KUPFER: What I would like to address
20 in particular, not only heard it here but heard
21 it a lot of places elsewhere, and that is that,
22 you know, rates have been given for Vitol. And
23 so I would like to look -- what I'm referring to
24 is the presentation that you prepared yesterday
25 for the public hearings, and that there is a

1 section in there entitled the Authority's request
2 for a base rate increase from -- the e-mail
3 exchange that I've seen back and forth that looks
4 like that came from the PSC. So I'd just like to
5 take a minute and go through it.

6 As indicated in your residential bill, the
7 base rates are currently reflected in three
8 charges, customer charge, currently a flat monthly
9 fee of \$4.86 for most residents. First
10 250-kilowatt hours, currently at 15.0141-cents per
11 kilowatt hour, over 250-kilowatt hours currently
12 at 17.6339-cents per kilowatt hour. The remainder
13 of the bill includes a number of specific charges,
14 including the fuel charge or LEAC levelized fuel
15 adjustment charge.

16 The LEAC charge is currently 19.2569-cents
17 per kilowatt hour. The LEAC is not directly at
18 issue in this proceeding but is implicated in the
19 future generation plans of the Authority.

20 However, the majority of the surcharge listed on
21 your bill are matters included in this base rate
22 proceeding, including line loss surcharge,
23 two-tenth's of a cent per kilowatt hour,
24 maintenance surcharge 2.4863-cents per kilowatt
25 hour. Pilot, which stands for pilot payment in

1 lieu of taxes 7-100th's of a cent per kilowatt
2 hour, sur and surcharge two-tenths of a cent of
3 kilowatt hour, leased generation surcharge
4 3.0845-cents per kilowatt hour. So when I keep
5 hearing that the PSC has given us rates for Vitol,
6 you know, the PSC approves rates, but I don't see
7 anything in the rate that I just went through that
8 has the name Vitol on it. So, Vitol, to me, is
9 treated like any other contract that the Authority
10 has based on the expenses that we're projecting in
11 that particular year. So, we don't get rates for
12 Vitol. We get rates for the first 250, over 250,
13 and then the surcharges that are laid out. So, I
14 think we need to spend some time discussing that,
15 and the concept that we're giving rates for Vitol
16 because what I see, I don't see a rate that has
17 Vitol on it, and I think that's a little bit of a
18 misnomer. And I think the PSC deliberately uses
19 that kind of language to confuse the public as it
20 relates to the Vitol project.

21 MR. HALL: The first issue that
22 Mr. Sprehn raised is whether an increase would
23 likely result in an increased revenue or whether
24 it would continue to worsen the revenue situation
25 of the Authority. Could you address that?

1 MR. KUPFER: Sure. A couple things. As
2 I pointed out in my opening remarks, we're not --
3 with this base rate, when it goes into effect,
4 the leased generation surcharge comes out. We
5 have a petition before the PSC on our LEAC, which
6 is a reduction. Once all those matters are
7 resolved, the rates will remain basically as they
8 are today. So, we're not going to see a
9 significant increase that could potentially
10 impact those sales. Additionally, we have an
11 exhibit -- what exhibit is that?

12 MR. HALL: You tell me. What are you --

13 MR. KUPFER: Post-generation tends.

14 (Deposition Exhibit Letter L was
15 marked for identification.)

16 MR. HALL: Direct you to Exhibit L of the
17 Authority.

18 MR. KUPFER: Exhibit L, which looks at
19 our generation in the April through September
20 timeframe of 2018 versus generation trends over
21 the April through September timeframe of 2019.
22 Off to the right, you'll see the residential
23 rates that were in effect.

24 MR. SPREHN: Could we slow down until we
25 actually get Exhibit L?

1 MR. KUPFER: Sure.

2 HEARING EXAMINER: I am looking for it.

3 It's labeled as L in the binder?

4 MR. HALL: Yes, the one with the tabs.

5 MR. SPREHN: This is Exhibit L as in your
6 list as of Sunday night, correct?

7 MR. HALL: Yes. The heading is
8 post-storm --

9 HEARING EXAMINER: Got you. I was
10 looking at the earlier binders.

11 MR. HALL: Post-storm Generation Trends.

12 MR. SPREHN: Start again, please. I'm
13 sorry.

14 MR. KUPFER: So, the first line labeled
15 2018 shows our generation, the timeframe April to
16 September 2018.

17 The second line is generation April
18 through September by month for 2019. And then the
19 third line labeled '18, '19 growth shows the
20 growth in generation from 2018 to 2019. The last
21 column shows the residential rates that were on
22 average over that timeframe. I think, you know,
23 it's interesting to note prices went up during
24 this timeframe. Yet, demand also went up during
25 this timeframe.

1 August and September, I think are a little
2 bit low because they were impacted by Dorian and
3 Karen. So generation in '19, those months were
4 impacted by those storms. So I think when we see
5 October, we'll see a continuing trend of
6 increases. So, to me, the U.S. Virgin Islands is
7 significantly economically depressed from the
8 storms, and power demand is directly correlated
9 with economic growth. And so that's why I believe
10 our sales have been depressed since the storm, but
11 it is coming back. So I don't believe that this
12 rate that we're looking for, again, is not going
13 to significantly impact the rate, it's gonna have
14 any impact on demand.

15 When we put the last rate increase into
16 effect in February of 2017, we captured additional
17 revenue. Revenue didn't go down. Revenue went up
18 as we expected it to with the additional charges
19 that we put in.

20 And the last thing I'm going to add is
21 that we and the PSC are actively working together
22 to increase solar in other penetration here in the
23 territory. So we're encouraging distributed
24 generation that could over time lead to lower
25 sales. I believe we don't need to be afraid of

1 that. We need to be encouraging that. What we
2 need to do is be able to put rates into effect
3 that protect classes of citizens that are never
4 going to have solar. And that's low income, or
5 people that are on fixed income. I don't know.
6 Maybe we need a special, you know, low income
7 residential rate that protects those customers
8 when people go off the grid and your customer base
9 shrinks a little bit, but we can't ignore solar
10 and renewable availability here because it's too
11 important of a resource. We need to get away from
12 fossil fuels. We're gonna be putting in more
13 renewable wind and solar and our customers are
14 going to be doing it and we can't be afraid of
15 that. We need to encourage it and take advantage
16 of it but figure out how to protect the elements
17 of society that are never going to be able to
18 afford their own distributed generation.

19 MR. HALL: Let me ask you about diesel as
20 a source of fuel as opposed to propane. As I
21 understood Mr. Sprehn's opening, it was to the
22 effect that the burden is on WAPA to prove that
23 diesel is more effective than propane?

24 MR. KUPFER: That's why I asked for a
25 copy of his statement because I did not

1 understand that section of it. So maybe if he
2 could --

3 MR. HALL: Was there a time when diesel
4 through HOVENSA was a very cost-effective fuel
5 for WAPA?

6 MR. KUPFER: WAPA purchased HOVENSA --
7 fuel oil from HOVENSA at basically the cost of
8 its low sulfur crude oil, landed cost of low
9 sulfur crude oil each month and that price was
10 typically -- the 2 oil market price typically
11 would be 40 percent or so higher than that price.
12 But that, of course, ended in 2012 when the
13 refinery shut down. Since then, the Authority's
14 choice is to buy market based 2 oil or market
15 based propane, and propane has been significantly
16 cheaper than 2 oil.

17 MR. HALL: Now, one of the issues that
18 Mr. Sprehn mentioned had to do with returns of
19 Vitol refinancing issues, whether the terms had
20 been made clear. Is there any financing in place
21 today for --

22 MR. KUPFER: No, and we've had this
23 discussion before with the PSC, their
24 consultants. There is no ongoing active
25 discussion with any individual companies or Vitol

1 related to the purchase of the LPG facilities by
2 another entity because quite simply, we don't
3 have the base rates that would support another
4 entity stepping into Vitol's shoes. And that's
5 why we need to get the base rate sorted out so we
6 can begin that process. We know there are
7 parties that are interested in buying the propane
8 facilities and owning and operating them
9 themselves. Some of the very same entities that
10 have invested in the Lime Tree we have talked to.
11 The energy infrastructure funds are chasing --
12 they have a lot of money chasing fuel projects,
13 and with current treasury yields being at
14 historic lows, they don't want to invest that
15 2 percent. They want to be putting their money
16 in at higher rates. So we feel very strongly
17 that if we had the base rates that cover all of
18 our expenses, provide the debt service coverage
19 ratios that we need, that the Vitol facility
20 could be financed at a significant -- at a 2-cent
21 reduction in savings to our ratepayers.

22 Furthermore, we believe that, then, the
23 longer term solution for those facilities is for
24 the Authority to buy them using a United States
25 Department of Agriculture loan through the Rural

1 Utility Service or RUS program. That would be a
2 20-year loan at probably 2 to 3 percent interest.

3 We recently met with RUS and they
4 indicated, one, they would need a senior lien
5 position, which means that we have to provide them
6 the proper debt service coverage ratios to offer
7 them a senior lien position. They also indicated
8 because recently in Puerto Rico they had to
9 restructure a loan they made to the water and
10 wastewater treating entity in Puerto Rico, that
11 they would want to see a couple years of financial
12 stability at the Authority before they would make
13 that loan. So we think that loan, the earliest we
14 would potentially receive it would be maybe fiscal
15 year '24, just because we need the revised rates,
16 we need to have a couple years of financial
17 stability and then we think the ultimate solution
18 for Vitol is the RUS loan, and that would save
19 versus today probably 3 to 3-cents a kilowatt
20 hour. But again, no, we have no transaction. We
21 have not discussed the purchase price for the
22 assets. And so that does not exist. today.

23 MR. HALL: You heard the opening
24 statement that talked in detail about a
25 transformation plan. Can you explain what

1 percentage of the transformation plan is funded
2 through base rates.

3 MR. KUPFER: Right now we expect zero of
4 it to be funded through base rates. We expect
5 that hopefully will be hundred percent funded
6 through FEMA and HUD. We are continuing to work
7 with FEMA on projects and we're continuing to
8 work with the governor on getting, you know,
9 additional funding for the Authority. He's in
10 Washington, I think, later this week to continue
11 to work with HUD on getting additional funding
12 for the territory. So, we hope when all is
13 settled that all of those projects can be funded
14 through FEMA and HUD.

15 MR. HALL: Now, you indicated, I think,
16 that the transformation plan is going to cost
17 somewhere in the vicinity of \$600 million.

18 MR. KUPFER: Well, FEMA has obligated
19 \$600 million for just the first step, which are
20 the hardening projects. The renewable and
21 generation projects coming through HUD will --
22 they will be a couple hundred million dollars of
23 projects. Right now, the Authority has been
24 allocated \$200 million from HUD, but we're hoping
25 to get more. And as I said, the ultimate path

1 will be defined by the Integrated Resource Plan
2 that we're currently finalizing.

3 MR. HALL: If the transformation plan
4 doesn't require an expenditure by WAPA, then why
5 is it relevant to the base rate case?

6 MR. KUPFER: As I said in my remarks, if
7 we do not get the Authority so that its finances
8 are stable, we're going to have a number of
9 issues. One is attracting vendors to bid on
10 projects when we put them out to bid. If we've
11 got vendors that we've defaulted on and we're
12 having issues keeping power plant supplied with
13 fuel, I think bidders would be nervous that
14 they're going to be going down the road where
15 they're entering projects for an authority that's
16 on very shaky grounds.

17 Additionally, I think it would be of
18 concern to both FEMA and HUD to be granting
19 significant amounts of money to an authority
20 that's under financial distress. Every time there
21 is a negative article in the paper, for instance,
22 when we were subpoenaed to go before the senate,
23 we hear right away from our contacts at FEMA and
24 Treasury, they're asking us, you know, what's
25 going on and what does that mean. So, I think,

1 you know, continued financial instability at the
2 Authority would put us under the microscope in
3 terms of our ability to manage these grants. So
4 that's why I think it is very much tied to the
5 base rate petition because without it, I don't
6 think the plan will be successful.

7 MR. HALL: Are WAPA's bonds investment
8 grade?

9 MR. KUPFER: No. Our bonds are all
10 triple C, which is junk bond status.

11 MR. HALL: And is there a status below
12 that?

13 MR. KUPFER: Let me just talk to
14 Standards and Poors because I know them the best.
15 We are currently rated triple C. There is a
16 double C category and a C category. So we could
17 be further downgraded within that C category. So
18 yes. And I think as I said in my testimony, I
19 think if we don't get this base rate petition
20 approved, there is a very good chance that we
21 would have further downgrade from the rating
22 agencies.

23 MR. HALL: How are other rating agencies
24 besides this Standards and Poors?

25 MR. KUPFER: The major ones are Fitch and

1 Moody and Standards and Poors, and we're all at
2 junk bond status, and I believe all of them also
3 have us on negative watch or negative outlook.

4 MR. HALL: Lastly, I think Attorney
5 Sprehn spoke to a concern about the utility's
6 cash flow, its ability to meet its obligations,
7 its working capital, can you speak to those
8 issues as they relate to WAPA?

9 MR. KUPFER: Yes. So the petition that
10 we have submitted allows us to cover all of our
11 expenses. We still have, you know, significant
12 bank lines with Banco and First Bank that, you
13 know, we need to put a payment plan in place with
14 them, but they're not demanding payment tomorrow.
15 They just want to see a plan in place so that
16 over the next couple of years we can begin to
17 draw those lines down, and that will be part of
18 the overall, you know, fiscal recovery plan that
19 we are developing and will continue to develop
20 but, again, the immediate issue is getting these
21 base rate petitions approved so we can return to
22 some level of financial stability. And we have,
23 then, base rates we can show the lenders that
24 show we cover all of our expenses and show that
25 we provide the debt service coverage ratios that

1 are required.

2 MR. HALL: What would be the consequence
3 if WAPA were not able to obtain the base rate
4 relief as requested?

5 MR. KUPFER: Right. So, you know, this
6 base rate petition is asking for \$30.4 million,
7 which is about 6-cents a kilowatt hour. The
8 lease generation surcharge we have that's in
9 effect is 3-cents, but it's only for six months.
10 So that would disappear at the end of this year
11 leaving us, then, fully exposed to that
12 \$30 million or 6-cents a kilowatt hour deficit.

13 And as I said in my remarks, we have three
14 very critical -- four very critical vendors. One
15 is Vitol supplying propane. The second is
16 Glencore supplying 2 oil. Then we have APR energy
17 supplying lease generators here in St. Thomas and
18 Aggreko supplying lease generators in St. Croix.
19 All of those vendors are important to the services
20 that the Authority provides. As I said in my
21 remarks, Vitol, we currently owe about \$75 million
22 to, based on not having the ability because of
23 loss sales and other reasons to pay them the full
24 contractual amounts, and as we provided in
25 exhibits, we are under a forbearance type

1 agreement with them to stay current with the
2 amounts that are owed. So I think they are the
3 ones that we're on the shortest leash with and
4 they've clearly run out patience at their board
5 level with the Authority. So the one that keeps
6 me up at night the most is suspension of propane
7 deliveries. As I said, that would result in a
8 LEAC increase of about 14-cents. We would,
9 obviously, stop paying Vitol their monthly fees
10 because they're not delivering propane. However,
11 I think to note that even though they've suspended
12 deliveries, that does not relieve us of our
13 obligation to continue to make payments under the
14 contract. So we would continue to be building,
15 you know, an amount each month that in their minds
16 we owe to them. So that doesn't relieve us of the
17 obligation to pay them and sort things out. But
18 that would reduce that 14-cent increase so that
19 the customer would see about a 7-cent increase
20 which for the 400-kilowatt hour average
21 residential customer is \$28 a month. At the same
22 time, if that happens, I have significant concerns
23 that we would have to switch over to 2 oil, and we
24 have a credit agreement with Glencore, but I would
25 be concerned that we would max out on that credit

1 agreement at times and not be able to pay for the
2 deliveries of fuel and face run out situations at
3 both of our plants for 2 oil deliveries.

4 MR. HALL: Thank you. I yield the
5 witness.

6 HEARING EXAMINER: I have a general
7 question, Mr. Kupfer. In the testimony in the
8 statements with regards to the elimination of, I
9 think it's the lease generation surcharge of
10 3-cents per kilowatt hour and the increase that
11 the Authority is seeking is for 6-cents per
12 kilowatt hour, and your testimony has been
13 consistent that the rates will not change
14 significantly or basically remain the same.

15 MR. KUPFER: The overall rates which
16 would be the combination of the LEAC rates and
17 the base rates.

18 HEARING EXAMINER: With what amount of
19 certainty can you state that the overall rates
20 would remain the same?

21 MR. KUPFER: So, the LEAC petition we
22 have before the PSC, I think, calls for a
23 2.6-cent per kilowatt hour reduction. And so the
24 base rate increase we're saying averages 6. It's
25 actually 5.8. So it is not quite 6. So the net

1 effect of the lower LEAC and putting in the
2 5.8-cents but taking out the 3.1 basically leaves
3 the status quo of where we are in terms of
4 overall rates as they exist to customers today.

5 HEARING EXAMINER: That was my question.
6 Attorney Sprehn? Thank you.

7 **CROSS-EXAMINATION**

8 **BY MR. SPREHN:**

9 MR. SPREHN: Good morning, Mr. Kupfer. I
10 wanted to recap a few of the items of testimony
11 here. Let's start with the ratings on WAPA's
12 bonds. You mentioned that -- your testimony was
13 with Standards and Poors you're familiar with
14 those ratings is triple C, is that correct?

15 MR. KUPFER: Yes.

16 MR. SPREHN: Did Standards and Poors
17 actually withdraw its ratings of WAPA's bonds?

18 MR. KUPFER: The last rating they gave us
19 was triple C. I'm not an expert enough to say
20 that rate still exists. They're just not rating
21 our bonds anymore.

22 HEARING EXAMINER: What was the time of
23 the last rating from S&P? Do you know when that
24 was?

25 MR. KUPFER: No. Does anybody on staff

1 have the answer to that question? We can get
2 that.

3 HEARING EXAMINER: Okay.

4 (Deposition Exhibit Letter P was
5 marked for identification.)

6 MR. SPREHN: Might I refer you to what
7 the Water and Power Authority submitted on Sunday
8 evening as Exhibit P? Take a moment to review
9 that document. This document indicates that WAPA
10 no longer has a rating on its electric system
11 bond by Standards and Poors.

12 MR. KUPFER: Okay, go ahead.

13 MR. SPREHN: Is that your understanding,
14 there is no longer a rating on your bonds?

15 MR. KUPFER: They suspended the ratings,
16 correct.

17 MR. SPREHN: And the statement as to why
18 is because they had been unable to obtain timely
19 information of a satisfactory quality to maintain
20 a rating on the securities, is that correct?

21 MR. KUPFER: Yeah, that was the reason
22 that they cited.

23 MR. SPREHN: Is there a difference in the
24 financial information you're providing here and
25 the information that you provided to Standards

1 and Poors?

2 MR. KUPFER: I would have to look at the
3 information that was provided to Standards and
4 Poors in that timeframe versus now, so.

5 MR. SPREHN: We're on ratings. Let's
6 continue on that subject for a moment.

7 HEARING EXAMINER: The exhibit answers my
8 question. So the triple C rating was -- that
9 last rating September 18, 2017?

10 MR. SPREHN: 2018. November 2018 is when
11 they suspended the rating, excuse me.

12 HEARING EXAMINER: So the triple C rating
13 was at least mid to late 2017?

14 MR. SPREHN: That's my understanding from
15 Standard and Poors, that's correct.

16 HEARING EXAMINER: You can continue.

17 MR. SPREHN: Are you familiar with
18 Trafigura as a supplier or vendor to WAPA?

19 MR. KUPFER: Yes.

20 MR. SPREHN: Does Trafigura have an
21 outstanding judgment for 25 million against the
22 Water and Power Authority?

23 MR. KUPFER: Yes.

24 MR. SPREHN: When is that judgment date
25 from?

1 MR. KUPFER: I'll have Lorelei Farrington
2 come up. She may know.

3 HEARING EXAMINER: Can you spell the name
4 of the company that you're referencing?

5 MR. SPREHN: Trafigura is
6 T-r-a-f-i-g-u-r-a.

7 MS. FARRINGTON: Good morning. Lorelei
8 Farrington, General Counsel to WAPA. I can't say
9 with the certainty on that information. I
10 believe it may have been in the 2016 timeframe,
11 but that would be information that I will have to
12 verify.

13 MR. SPREHN: Has WAPA satisfied that
14 judgment?

15 MS. FARRINGTON: No, to the date WAPA has
16 not.

17 MR. SPREHN: Has WAPA made any payments
18 on that?

19 MS. FARRINGTON: No. To my knowledge,
20 no.

21 MR. SPREHN: Does WAPA's budget in this
22 proceeding include payment of Trafigura's
23 judgment?

24 MR. KUPFER: No.

25 MR. SPREHN: Let's look at the financials

1 regarding Vitol if we might. Do you have an
2 exhibit with your testimony regarding the amounts
3 that are due to Vitol?

4 MR. KUPFER: No.

5 MR. SPREHN: Does anyone who is
6 testifying for the Water and Power Authority have
7 any exhibit regarding what's due to Vitol?

8 MR. KUPFER: We could certainly produce
9 one, but I don't think anybody has one in the
10 building here today.

11 HEARING EXAMINER: How soon can you
12 produce that?

13 MR. KUPFER: Ms. Gottlieb, how soon can
14 you produce that?

15 MS. GOTLIEB: Very shortly.

16 HEARING EXAMINER: Does that mean today?

17 MS. GOTLIEB: Yes.

18 MR. KUPFER: We have the information. We
19 just don't have it in the room.

20 HEARING EXAMINER: So I'm gonna ask for
21 production of that to be made to myself and the
22 PSC by end of day today.

23 MS. FARRINGTON: May I update you on
24 Trafigura?

25 HEARING EXAMINER: Sure.

1 MS. FARRINGTON: It was a consent
2 judgment that entered into May 10th of 2017.

3 MR. SPREHN: The amount of that judgment
4 was?

5 MS. FARRINGTON: \$24,469,775.17.

6 HEARING EXAMINER: You said it was a
7 consent judgment?

8 MS. FARRINGTON: Correct.

9 HEARING EXAMINER: What was the source of
10 the judgment? What was the source of the dispute
11 that led to judgment?

12 MS. FARRINGTON: Cost for fuel.
13 Trafigura was our fuel providing at the time.

14 MR. KUPFER: For 2 oil.

15 MR. SPREHN: When did Trafigura cease
16 being your fuel provider?

17 MS. FARRINGTON: That I will have to get
18 back to you on.

19 (Deposition Exhibit Letter K was
20 marked for identification.)

21 MR. SPREHN: In WAPA's list of proposed
22 exhibits as produced on Sunday, Exhibit K is a
23 Notice of Default dated July 9th, 2019. Do you
24 have that available to you?

25 MR. KUPFER: Yes.

1 MR. SPREHN: Would you please take a
2 moment and review that Notice of Default?

3 MR. KUPFER: Okay. I'm good. Go ahead.

4 MR. SPREHN: As of July of 2019, was WAPA
5 in arrears in the amount of \$96,750,222.09 to
6 Vitol?

7 MR. KUPFER: I don't know the answer to
8 that question. Certainly was -- at the time, it
9 was around a hundred million dollars.

10 MR. SPREHN: You did review this default
11 and the underlying information to substantiate
12 it's accuracy?

13 MR. KUPFER: I think our records at the
14 time would have showed over a hundred million
15 dollars.

16 MR. SPREHN: We understand your testimony
17 to be that the Water and Power Authority had
18 declined sales in amount of about 18 percent for
19 2017 -- fiscal year 2017, is that correct?

20 MR. KUPFER: No, fiscal year '19 and
21 fiscal year '20.

22 MR. SPREHN: 2020. Do you know what your
23 decline in sales was in fiscal year 2017?

24 MR. KUPFER: That was, of course, the
25 year of the storms. I could get that, but it

1 would have been significantly less because of
2 basically no sales for September, October,
3 November, you know, and December, because of the
4 hurricanes. Somebody in the room may have that.
5 I do not. That's a number that's meaningless.

6 MR. SPREHN: I believe it was
7 January 2017, the Public Services Commission
8 ordered that the infrastructure cost and the
9 operations of maintenance expenses associated
10 with Vitol be rolled out of the LEAC and into
11 base rates, is that correct?

12 MR. KUPFER: I can't answer that
13 question. Maybe Joan or Akeyla, can you answer
14 that question?

15 HEARING EXAMINER: Just say your name.

16 MS. CHRISTIAN: Akeyla Christian. It was
17 July --

18 HEARING EXAMINER: State your position,
19 please.

20 MS. CHRISTIAN: Director of Disaster
21 Recovery and Compliance.

22 MR. KUPFER: At the time she managed the
23 pricing and rate group.

24 HEARING EXAMINER: Understand.

25 MS. CHRISTIAN: It was July 1st, 2015

1 that transaction took place.

2 MR. SPREHN: 2015?

3 MS. CHRISTIAN: 2015.

4 MR. SPREHN: Was that when they were
5 included in the LEAC or was that when --

6 MS. CHRISTIAN: That was when they were
7 removed from the LEAC to be transferred, Order
8 66-2015.

9 (Deposition Exhibit Letter F was
10 marked for identification.)

11 MR. SPREHN: Thank you. So what I am
12 trying to understand is if there was a recovery
13 provided for Vitol at least as prior to the
14 hurricanes and there was a decline in sales of
15 18 percent, from the numbers that you provided
16 in -- let me see if I have the exhibit here in
17 front of me, Exhibit F. Your Exhibit F, you had
18 a sales decline of \$24 million in a year, how in
19 two years did Vitol get to be \$96 million in
20 arrears?

21 MR. KUPFER: Because that's basically the
22 years -- fiscal year -- the calendar year '17 and
23 '18 and now partially into '19. But, you know,
24 very few payments were made prior to the storms.
25 I can't account for the reason for that. Akeyla,

1 if you can, but obviously the rates we were
2 collecting were not sufficient to be paying that
3 infrastructure fee.

4 MR. SPREHN: Ms. Christian, are you the
5 person who is responsible for determining which
6 of bills get paid?

7 MS. CHRISTIAN: No, I am not.

8 MR. SPREHN: Who is?

9 MS. CHRISTIAN: Debra Gottlieb, the CFO.

10 MR. SPREHN: Did you discuss with Ms.
11 Gottlieb why the bills for Vitol remained unpaid,
12 or WAPA didn't pay it?

13 MR. KUPFER: She wasn't -- Ms. Gottlieb
14 was not the CFO at the time. Maybe we could
15 bring Ms. Gottlieb up, the CFO, at the time.
16 What was the individual's name?

17 MS. CHRISTIAN: Julio Rhymer.

18 MR. SPREHN: So at the time he was
19 executive director?

20 MS. CHRISTIAN: He was partially the CFO
21 in the beginning part of the Vitol contract and
22 then he was CEO when Mr. Kerry Hedrington, and
23 for a short-term Ms. Joan Foy, and myself after
24 the storms. I know that in the months before the
25 storm, part of the reason was that the Authority

1 and Vitol didn't come to agreement on some of the
2 charges that were being included.

3 MR. SPREHN: Could you tell us what those
4 charges were that were at issue?

5 MS. CHRISTIAN: There was a dispute as to
6 when substantial completion actually began that
7 would cause a delay in when we should have been
8 charged for our O&M expenses and the
9 infrastructure fee. I don't remember the amounts
10 at this time, but according to Vitol's record,
11 they were substantially completed, and the
12 Authority didn't agree with that date of
13 substantial completion.

14 MR. SPREHN: Was that dispute ever solved
15 in writing?

16 MS. CHRISTIAN: I'm not sure about that.

17 MR. KUPFER: Yes, ultimately we signed
18 off on the substantial completion documents.

19 MR. SPREHN: And on that substantial
20 completion document you signed off, was there a
21 specific allocation as to how much money had
22 already accrued in arrears?

23 MR. KUPFER: We would have to get that.
24 I don't know that.

25 HEARING EXAMINER: You don't know whether

1 there is a document, or there is a document but
2 you just don't have it available?

3 THE WITNESS: I don't know if there's --
4 I don't have the document that would have
5 answered that question nor do I know if the
6 document exists. So we would have to look for
7 it.

8 MR. SPREHN: I guess the question that
9 follows logically is did that occur prior to your
10 assuming the executive director role.

11 MR. KUPFER: I do not know. I haven't
12 seen it in either case.

13 HEARING EXAMINER: Was Ms. Gottlieb able
14 to identify any document that outlines the amount
15 of money owed to Vitol?

16 MR. KUPFER: She said we would produce
17 that by the end of the day.

18 HEARING EXAMINER: She doesn't have it
19 right now?

20 MR. KUPFER: No. This was an overall
21 accounts payable at the end of August, but it
22 doesn't provide the detail you're looking for on
23 Vitol.

24 HEARING EXAMINER: Understood.

25 MR. SPREHN: Mr. Kupfer, you earlier

1 stated that you thought it was, I'm paraphrasing
2 here, disingenuous on the part of the PSC to say
3 whether rates had been approved for specific
4 contracts, is that correct?

5 MR. KUPFER: Yes.

6 MR. SPREHN: However, isn't it a normal
7 traditional practice of utility commissions to
8 approve the inclusion of costs that are prudent
9 and reasonable in rate calculations?

10 MR. KUPFER: That's different than the
11 terminology you used. You said rates were
12 approved for Vitol and I think that's misleading
13 to state it that way.

14 MR. SPREHN: Did the Commission in 2015
15 approve the inclusion of amounts for Vitol as
16 prudent and a reasonable inclusion in base rates?

17 MR. KUPFER: In what year? Akeyla will
18 answer that question.

19 MS. CHRISTIAN: Yes, they did.

20 MR. SPREHN: How much has been paid down
21 on the Vitol contract since 2015?

22 MS. CHRISTIAN: I don't have that
23 information.

24 MR. KUPFER: So we started this year with
25 an approximately hundred million dollars payable

1 to them and we've paid that down so far by about
2 \$24 million this year.

3 MR. SPREHN: To be clear, that payable
4 included both fuel expenses and infrastructure
5 and O&M, is that correct?

6 MR. KUPFER: Correct, yes.

7 MR. SPREHN: And how much was the fuel
8 component of that?

9 MR. KUPFER: They are applying that
10 \$24 million to the fuel and O&M component.

11 MR. SPREHN: Does that bring the fuel
12 component up-to-date?

13 MR. KUPFER: No. It started this year at
14 about \$37 million. So it's around 13 for fuel
15 O&M, and there's also a delay charge in there.

16 MR. SPREHN: In your testimony, and in
17 fact in the testimony submitted by WAPA on
18 behalf -- by any person or consultant, is there
19 any new information submitted to the Public
20 Services Commission in this proceeding to explain
21 why the Vitol propane project in the higher
22 amount of 160 million is reasonable and prudent?

23 MR. KUPFER: No. We are wrapping up the
24 audit that was requested by the PSC. That audit
25 now, based on the last discussion we had, will

1 show our auditor has confirmed expenditures of
2 \$160 million, has confirmed the O&M expenditures.
3 So, that is the status, and we expect -- we're
4 hoping to deliver that audit by Thursday.

5 MR. SPREHN: So, at the present time,
6 there is no new information regarding the Vitol
7 Project for the Commission -- for this hearing
8 examiner's consideration?

9 MR. KUPFER: That is correct.

10 HEARING EXAMINER: The July 2015 decision
11 referenced by Ms. Christian transferring Vitol to
12 the base rate case, may I have a copy of that?

13 MR. SPREHN: We have noted it and we will
14 make copies, yes.

15 HEARING EXAMINER: It will be helpful to
16 have it now that we're asking questions about it.

17 MS. THOMAS-GRIFFITH: Is that Order 56 of
18 2015?

19 HEARING EXAMINER: I'm gonna give her
20 time to get it because I can't fully follow
21 without it.

22 MR. SPREHN: Fair enough.

23 HEARING EXAMINER: I'm going to break for
24 lunch now. If at all possible, it would be great
25 if Ms. Gottlieb can prepare that Vitol exhibit

1 for us. So maybe we can continue and pick up
2 there after lunch and then you will grab the July
3 25th order. We will resume at 1:15.

4 [Lunch recess.]

5 HEARING EXAMINER: Going back on the
6 record real quick. I am going to admit into the
7 record the following Order from PSC Docket No.
8 289, Order No. 660 of 2015 dated August 26, 2015
9 as it relates to paragraph five of that Order.
10 Do you all have it in front of you?

11 MS. THOMAS-GRIFFITH: Yes.

12 HEARING EXAMINER: Actually, paragraph
13 four and five as it relates to the removal of the
14 expenses associated with the Vitol contract from
15 the LEAC rate, and then I also want to seek
16 clarification of some testimony we had prior to
17 the lunch break. I think Ms. Christian had
18 testified that those costs associated with Vitol
19 had been removed from the LEAC rate. Were they
20 transferred to the base rate?

21 MS. CHRISTIAN: That's what I want to
22 clarify. So, in that Order that you read onto
23 the record, 66, they were removed as of July 1st
24 from the LEAC. They were not placed in the base
25 rate. The Authority then filed a petition for

1 reconsideration. That reconsideration was
2 granted, Order 71-2015. It does not specifically
3 state that the monies given was for the LPG
4 infrastructure fee, but a subsequent e-mail
5 coming from Attorney Boyd that was sent out to
6 the group, I redistributed it to Tisean and
7 yourself, indicated that that increase was to put
8 it back into the LEAC from October 1st. It
9 remained there. The Authority was ordered to let
10 it stay there until we filed for a new rate case,
11 which we did in December, and that new rate case
12 was not called until February -- was not
13 finalized, as I said, until February 2017.

14 HEARING EXAMINER: And what happened when
15 it was finalized? Was the cost included?

16 MS. CHRISTIAN: So it was then removed
17 from the LEAC altogether.

18 HEARING EXAMINER: So what I'm going to
19 do is Order No. 6 of 2015 is Hearing Examiner's
20 Exhibit 1. Order No. 71 of 2015, and these are
21 both in Docket No. 289, that Order 71 is now
22 Hearing Examiner's Exhibit 2, and the e-mail
23 that -- from Boyd Sprehn to officials of WAPA
24 dated September 22nd, 2015 at 10:16 p.m., the
25 subject line is 289-Reconsideration, that's now

1 Hearing Examiner's Exhibit 3.

2 (Hearing Examiner's Exhibit No. 1 was
3 marked for identification.)

4 (Hearing Examiner's Exhibit No. 2 was
5 marked for identification.)

6 (Hearing Examiner's Exhibit No. 3 was
7 marked for identification.)

8 Now, the Order or the final decision from
9 February, I think you said 2017 or 2016?

10 MS. CHRISTIAN: '17.

11 HEARING EXAMINER: That Order from
12 February 2017 that transferred those costs to the
13 base rates, do we have a copy of that?

14 MR. SPREHN: We have not gotten those
15 together for you yet. We are still working on
16 that for the end of day.

17 HEARING EXAMINER: That's fine. So you
18 can resume your questioning and I'll just ask
19 that that be provided later today. So the floor
20 is all yours, Attorney Sprehn.

21 MR. SPREHN: Good afternoon, Mr. Kupfer.

22 MR. KUPFER: Good afternoon.

23 (Exhibit Letter Q was
24 marked for identification.)

25 MR. SPREHN: Could I ask WAPA's counsel

1 to hand your proposed Exhibit Q, "Re. Investor
2 Services" dated October 3rd, 2019 to Mr. Kupfer?

3 MR. KUPFER: Go ahead.

4 MR. SPREHN: Okay, I'll point first to
5 page 1 and note in the matter of not being
6 unrelenting make it that this Moody's rating does
7 identify five credit strengths, does it not, on
8 the front page?

9 MR. KUPFER: Yep, and there's some more
10 in the text.

11 MR. SPREHN: So, we do note the increased
12 transparency to bondholders which is something
13 that will come up again in our discussions today.
14 The rate structure, including an automatic
15 recovery mechanism, and I understand that to be a
16 reference to the LEAC, does it not?

17 MR. KUPFER: I have no idea. That will
18 be a question for Moody's Investor Services.
19 Very likely could be, but it's not specific
20 enough for me to draw a conclusion.

21 MR. SPREHN: And a reduction in overdue
22 government receivables as of the end of July
23 2019, could you describe what that is in regard
24 to?

25 MR. KUPFER: Sure. In July, we received

1 what the USVI received, a Medicaid reimbursement
2 and 22.9 million of that came to the Authority.
3 And also during the month, the Government of the
4 Virgin Islands paid down other balances for other
5 GVI entities, including Waste Management
6 Authority. So basically at the end of the July,
7 all of the government entities, semi-autonomous
8 and the autonomous and executive branch were paid
9 down.

10 MR. SPREHN: On page two of the update by
11 Moody's, there are credit challenges. Moody's
12 identified retail electric rates of the Virgin
13 Islands amongst the highest in U.S. Territory and
14 States?

15 MR. KUPFER: I'm sorry, repeat the
16 question.

17 MR. SPREHN: Does Moody's identify WAPA's
18 retail electric rates as the highest among the
19 U.S. states and territories?

20 MR. KUPFER: Yes, they do.

21 MR. SPREHN: You have any information if
22 that's incorrect?

23 MR. KUPFER: No, I do not.

24 MR. SPREHN: The 2017 audit has not been
25 released yet as identified. Has the 2017 audit

1 been completed as yet?

2 MR. KUPFER: No.

3 MR. SPREHN: To be clear, this is the
4 2018 fiscal year, which would have ended in June
5 of 2018?

6 MR. KUPFER: That is correct.

7 MR. SPREHN: Do you have a date when that
8 will be completed?

9 MR. KUPFER: Only starting now. We're
10 targeting for the end of the first quarter next
11 year.

12 MR. SPREHN: So, approximately March,
13 April of 2020, correct?

14 MR. KUPFER: Yes.

15 MR. SPREHN: Am I correct?

16 MR. KUPFER: Eh-hmm.

17 MR. SPREHN: Also identified as a credit
18 challenge, the execution of various capital
19 projects which will require management resources
20 and good control of costs.

21 MR. KUPFER: Yes.

22 MR. SPREHN: Has WAPA undertaken any
23 steps to change the way in which it manages
24 projects so that it will demonstrate management
25 resources and good control of costs?

1 MR. KUPFER: And I talked about that in
2 my remarks. Specifically as they relate to --
3 first, from an overall portfolio standpoint,
4 we've been working with New York Power Authority
5 over the last year to help us plan out and
6 organize those. I've also made references to,
7 you know, the assistance of outside contractors
8 for project management and construction services,
9 and also working with the Department of Energy
10 and the National Renewable Energy Lab to make
11 sure that the renewable projects that we have
12 planned dovetail in with the thermo projects that
13 are planned. So, yes, we recognize we need
14 additional resources and we are planning on
15 getting those resources.

16 MR. SPREHN: Wasn't one of Vitol's roles
17 being a management for contract purposes?

18 MR. KUPFER: They had certainly project
19 management roles to play as they executed the
20 project. I have Greg Rhymer here. Greg, why
21 don't you come up and maybe you could speak to
22 some of the other overall project management as
23 it relates to who had responsibilities for what.

24 GREGORY RHYMER,
25 called as a witness, having been first duly sworn,

1 testified on oath as follows:

2 MR. KUPFER: Why don't you repeat the
3 question, Attorney Boyd?

4 MR. SPREHN: The last question related to
5 Vitol. Wasn't vital engaged to provide
6 management in contracting to control costs?

7 MR. RHYMER: Yes.

8 MR. SPREHN: Would you describe that as a
9 success?

10 MR. RHYMER: Yes.

11 MR. SPREHN: There was an over
12 \$73 million cost overrun project.

13 MR. KUPFER: We don't think
14 characterizing it as overrun is proper. We think
15 as you look at the contract, it called -- there
16 was going to be increases as the scope was
17 understood. We entered that contract without
18 doing the detailed engineering and FEED study.
19 That one would normally do a project primarily
20 because of the urgency of getting that project up
21 and constructed. At the time the Authority's
22 fuel bill was about \$250 million annually. The
23 project was seeing savings of 30 percent on fuel.
24 That's \$75 million a year. Taking out the
25 infrastructure cost, you're still left with

1 \$35 million of savings. To delay the project and
2 wait until you've done the detailed engineering
3 and prepare a more detailed estimate would have
4 taken two years. That would have also meant that
5 we could not have ordered the vessels until that
6 detailed engineering was complete and the
7 contract was signed. Those vessels we ordered
8 have a one-year lead time. So that would have
9 had added three years to the project schedule.

10 The board felt that in reviewing that, it
11 was proper to enter into the contracts knowing
12 that there was great uncertainty as to the final
13 cost of the project. So we don't believe
14 characterizing those as over cost-overruns is
15 proper. It's really changes to the design,
16 changes to the soil conditions, changes due to
17 both docks at both places, that both plants needed
18 to be upgraded, and the coast guards insistence on
19 a single point mooring for the floating offshore
20 storage.

21 MR. SPREHN: When was that contract
22 entered?

23 MR. KUPFER: July of 2013, I believe.

24 MR. SPREHN: And you earlier testified
25 today as to when there was a resolution of the

1 substantial completion issue. When was that?

2 MR. RHYMER: Not certain of the year, but
3 one was in November and the other one was
4 January.

5 MR. KUPFER: One was November of '16 and
6 one was January of '17.

7 MR. SPREHN: So between three and three
8 and a half years after this contract was entered,
9 correct?

10 MR. KUPFER: Yes.

11 MR. SPREHN: You mentioned outside
12 contractors were brought on. Who are those
13 outside contractors?

14 MR. KUPFER: Oh, you mean for --

15 MR. SPREHN: For contract management.

16 MR. KUPFER: So, we are in the process
17 now of soliciting RFPs. So we do not have those
18 now, but those would be procured over the next
19 couple of months.

20 MR. SPREHN: Are those distinct from the
21 process of soliciting bids for the new equipment?
22 Is there a separate RFP for project management?

23 MR. KUPFER: This will be an RFP for
24 project management, that's correct.

25 MR. SPREHN: It has not gone out as of

1 yet?

2 MR. KUPFER: That's correct.

3 MR. SPREHN: Looking on page two of this
4 Moody's Exhibit Q, there are key indicators and
5 certain financial reportings at the bottom. From
6 2012 to 2017, that reports operating revenue
7 dropping from \$333 million to \$244 million, is
8 that correct?

9 MR. KUPFER: That's what the report
10 shows, yes.

11 MR. SPREHN: Do you have any contrary
12 information?

13 MR. KUPFER: I don't have any information
14 one way or another related to the data presented
15 here.

16 MR. SPREHN: You have no information as
17 to how much of that would have been LEAC and how
18 much of that would have been base rates?

19 MR. KUPFER: No.

20 MR. SPREHN: You have no information
21 regarding what the sales figures would have been
22 for those years?

23 MR. KUPFER: We have that. I don't have
24 it with me. Obviously, 2012 and 2013 were times
25 of very high fuel prices continuing on into '14.

1 (Exhibit No. 14 was
2 marked for identification.)

3 MR. SPREHN: I'm going to hand you what
4 we had previously identified as PSC Exhibit 14.
5 I'll have copy for counsel and for the witness in
6 a moment. Have you had a chance to look at
7 Exhibit 14, Sir?

8 MR. KUPFER: Yes. I recognize it from
9 the presentation that the Authority prepared.

10 MR. SPREHN: And this is a presentation
11 that the Water and Power Authority prepared in
12 May of this year, is that correct?

13 MR. KUPFER: Correct.

14 HEARING EXAMINER: Is this the May 31st,
15 2017?

16 MR. SPREHN: May 24, 2019, correct.

17 HEARING EXAMINER: The one in my binder
18 looks different. This is Exhibit 14? This is
19 your 14?

20 MR. SPREHN: Yes.

21 HEARING EXAMINER: Okay. I'm going to
22 show you the front page of what I have as 14. It
23 is a PSC staff report. Is that different?

24 MS. THOMAS-GRIFFITH: That's what's in --

25 MR. SPREHN: That's the one we were

1 missing.

2 HEARING EXAMINER: I don't think it's 14.

3 I mean, it's not 14 based on your --

4 MR. SPREHN: Let me recheck mine.

5 HEARING EXAMINER: All right. I'm going
6 to replace the 14 you provided with that as the
7 new 14. The 14 that you provided as an exhibit
8 is the Docket No. 651, report from PSC staff from
9 Mr. Madan and Mr. Gawlik, May 31st, 2014.

10 MR. SPREHN: What is the number? What
11 date?

12 HEARING EXAMINER: May 31st, 2014.

13 MR. SPREHN: Yes. That's not the correct
14 placement.

15 HEARING EXAMINER: So this is not 14. So
16 14 will now be the V.I. Water and Power Authority
17 Rate Relief, Government of the Virgin Islands
18 Report dated May 24, 2019.

19 MR. SPREHN: I apologize for that
20 confusion.

21 HEARING EXAMINER: That's fine. Since
22 we're going into a new area, let me just take a
23 moment to have Ms. Christian sworn in. I don't
24 think we swore her in. Let me have her sworn in
25 and let her adopt what she already testified to,

1 and I need to do the same with Attorney
2 Farrington.

3 AKEYLA CHRISTIAN,
4 called as a witness, having been first duly sworn,
5 testified on her oath.

6 MR. SPREHN: On page two, there's
7 identification of 625 million in mitigation
8 projects that FEMA and HUD funded. Have any of
9 the under-grounding projects commenced as yet?

10 MR. KUPFER: We're doing engineering for
11 underground projects.

12 MR. SPREHN: They have not either been
13 bid or have been commenced at this time?

14 MR. KUPFER: That is correct.

15 MR. SPREHN: Engineering, is that
16 correct?

17 MR. KUPFER: Yes.

18 MR. SPREHN: Can you give us a status on
19 composite pole projects?

20 MR. KUPFER: We have composite pole
21 projects ongoing on all of the islands,
22 St. Croix, St. Thomas, St. John, and as I
23 mentioned in my remarks, Water Island is
24 complete. We anticipate being substantially
25 complete by the end of next year and being a

1 hundred percent complete in the first quarter of
2 '21.

3 MR. SPREHN: And again that is a FEMA
4 funded project, is that correct?

5 MR. KUPFER: That is correct.

6 MR. SPREHN: St. John emergency
7 generators are in place?

8 MR. KUPFER: No, the contract has been
9 awarded and engineering is ongoing.

10 MR. SPREHN: What is the size of the
11 generators?

12 MR. KUPFER: Two, 4-megawatt generators
13 with battery storage.

14 MR. SPREHN: Are those generator units
15 that would be part of a standard dispatch or are
16 they strictly on an emergency basis?

17 MR. KUPFER: They're strictly emergency.
18 They're strictly diesel emergency generators.

19 MR. SPREHN: You also identified here as
20 efficient generation HUD funded. Has HUD
21 actually committed to the funding of these
22 projects?

23 MR. KUPFER: Yes. The first tranche has
24 been a \$45 million, has been totally approved by
25 HUD, and all the agreements Virgin Islands

1 Housing Finance Authority are approved, and I
2 believe we have those as exhibits in the
3 information that's been provided.

4 MR. SPREHN: That is the information that
5 was provided on Sunday?

6 MR. KUPFER: That's the information
7 that's been provided.

8 (Exhibit Letter Y was
9 marked for identification.)

10 MR. HALL: Would be Exhibit Y.

11 MR. SPREHN: Would be Exhibit Y?

12 MR. HALL: Yes.

13 MR. SPREHN: And that Exhibit Y would
14 fund the four new 10-megawatt units for St.
15 Thomas?

16 MR. KUPFER: 40-megawatts is the maximum.
17 It's up for the vendor to decide what sizes it's
18 gonna bid, but it's 40-megawatts max and four
19 units.

20 MR. SPREHN: And four units?

21 MR. KUPFER: Eh-hmm, and battery storage.

22 MR. SPREHN: How much battery storage
23 would that be, again, if you know?

24 MR. KUPFER: I don't know. Clinton, can
25 you specify size of battery storage or --

1 HEARING EXAMINER: Can you swear in Mr.
2 Hedrington?

3 CLINTON HEDRINGTON,
4 called as a witness, having been first duly sworn,
5 testified on his oath as follows:

6 MR. HEDRINGTON: Nine to 10-megawatts of
7 battery storage.

8 MR. SPREHN: Is there a target date for
9 implementation or they're online date for the
10 battery storage?

11 MR. HEDRINGTON: For the battery storage?

12 MR. SPREHN: Yes.

13 MR. HEDRINGTON: No. It is really based
14 on how the bids come in.

15 MR. SPREHN: Is there online -- is there
16 a requirement date in the RFP for the
17 40-megawatts of generation capacity for when that
18 project will be complete?

19 MR. HEDRINGTON: No, because it is open
20 to technology. So it can be if it is combustion
21 turbine that's selected, it can be a little
22 longer than the RECIPS. So it is all based on
23 the bids that you get. We can't because of HUD,
24 we can't specify an online date. They have to
25 respond and we evaluate based on the schedules.

1 We can't specify that type of stuff in the RFP.
2 It has to be completely open.

3 MR. SPREHN: Let me see if I could
4 clarify a couple of things. The record here, you
5 mentioned combustion turbine and RECIPS. Would
6 you describe what those two types of units are.

7 MR. HEDRINGTON: Combustion turbines are
8 combustion fired turbines as what we have in the
9 plants now. RECIPS are actually like engines,
10 reciprocating medium to slow speed engines,
11 different technologies, different degenerating
12 technologies.

13 MR. SPREHN: You said the combustion
14 turbines you have now, you're talking about the
15 older units, not the Wartsilas -- when you
16 described combustion turbines as the units we
17 have now, do you mean units such as 15 and 18 and
18 23 on St. Thomas?

19 MR. HEDRINGTON: Those are turbines.

20 MR. SPREHN: Combustion turbines. And
21 those historically have been larger units than
22 what you're seeking now, is that correct?

23 MR. KUPFER: That's correct.

24 MR. SPREHN: And you said this is a
25 requirement that you cannot specify this as

1 result of the HUD bidding project?

2 MR. HEDRINGTON: We can't specify
3 anything. It has to be a complete open bidding
4 process. So we would evaluate the schedule as
5 part of the evaluation criteria, but we can't
6 specify. We just can't do that. We can't even
7 specify the technology. It has to be open.

8 MR. SPREHN: Okay, thank you. On page
9 four of this presentation, there's an e-mail, or
10 I should say -- yes, it is identified as a May
11 10th e-mail from Vitol demanding a repayment plan
12 from WAPA regarding Vitol. Has such a repayment
13 plan been entered into?

14 MR. KUPFER: Yes. We paid the 20 million
15 that was referenced here, and we are staying
16 current with all obligations, and they've asked
17 for an additional -- started out at two and a
18 half million dollars per month of a drawdown and
19 we agreed at one and a half million dollars per
20 month as a drawdown starting in August. In
21 August, we didn't make the payment. So I
22 requested rather than five months at 1.5, it
23 would be four months at 1.875 million, and that's
24 currently where we're at, and I believe those are
25 in as an exhibit.

1 MR. SPREHN: When you say your current
2 monthly, what is the amount you're paying the
3 monthly for current charges?

4 MR. KUPFER: Well, we purchased propane
5 based on the market price. The infrastructure
6 fee is \$2.6 million a month per the currently
7 approved contract, and the O&M cost of \$721,000
8 per month as stipulated in the contract. The
9 O&M, it changes every year based on the annual
10 agreement between the Authority and Vitol.

11 MR. SPREHN: Turning to page five of this
12 presentation, there's a description of critical
13 liabilities as a result -- let me start again.
14 Critical liability has occurred as a result of
15 deficits of 277.6 million. The first line on
16 that is Vitol fuel at 25 million. Has that been
17 paid current?

18 MR. KUPFER: As I said earlier, we had
19 this 35 or \$37 million payable to them, that's
20 been paid down by \$24 million. So I'm not sure
21 if that's been all applied to fuel, or would they
22 had applied some to O&M. I don't have that
23 current information. I don't know. Debra is in
24 here now, but as I said earlier, the 24 million
25 of additional payments we made had gone against

1 that 35 million-dollar line item. Let me correct
2 that. So we made a 2 million-dollar payment to
3 them in February. So the fuel went from 27 to
4 25. So from the 35, we paid down an additional
5 22.

6 MR. SPREHN: Further down on this page,
7 there are Glencore and Trafigura. We previously
8 discussed Trafigura, the 25 million-dollar
9 judgment in place. Glencore item is No. 2 fuel
10 oil, is that correct?

11 MR. KUPFER: That's correct.

12 MR. SPREHN: Has that amount been paid
13 down?

14 MR. KUPFER: That \$12 million is allowed
15 under the contract with Glencore, and so it
16 varies from month to month. I think a couple
17 months it was as low as 6 million. It's back up
18 from then, but I don't think it's back to the
19 12 million, but again that's the normal amount
20 per the contract that as long as the contract is
21 in place, that's the credit that's allowable.

22 MR. SPREHN: So, to clarify this, the
23 three items we have been talking about here, the
24 Vitol fuel and Glencore and Trafigura, these are
25 all amounts that should be paid through the LEAC,

1 is that correct?

2 MR. KUPFER: The Trafigura, I'm not sure.
3 I'm not sure. I'm not sure which period of LEAC
4 you're talking about, but yes, fuel is covered by
5 LEAC.

6 MR. SPREHN: The APR and Aggreko
7 generator payments, those are currently either
8 covered with base rates or in a fuel surcharge,
9 is that correct -- not a fuel surcharge, a
10 generation surcharge.

11 MR. KUPFER: As of the date of this,
12 which is April 30th, we had not received the
13 leased generator surcharge. So no, we were not
14 collecting sufficient rates to be paying those
15 amounts.

16 MR. SPREHN: Are they currently covered?

17 MR. KUPFER: We received the leased
18 generator surcharge, which we put into effect in
19 July, and that has allowed us to be making and
20 staying current with APR and Aggreko.

21 MR. SPREHN: When does the FEMA Community
22 Disaster Loan become payable?

23 MR. KUPFER: I believe the first payment
24 may be January of 21.

25 MR. SPREHN: Would that include principal

1 and interest?

2 MR. KUPFER: The first payment, I
3 believe, is just interest. And the principal may
4 not kick in until either July of that year or
5 January 1 of '22.

6 MR. SPREHN: And the budget information
7 supporting your application for this rate, does
8 it include payment of the FEMA Community Disaster
9 Loan?

10 MR. KUPFER: No, there is no money in
11 there for FEMA.

12 MR. SPREHN: Doesn't include money to
13 repay Banco Popular and First Bank lines of
14 credit?

15 MR. KUPFER: No, only the interest for
16 those facilities are in the petition.

17 MR. SPREHN: Page seven entitled "New
18 York Term Rates Calendar Year 2020 Rate Increase"
19 --

20 MR. KUPFER: Eh-hmm.

21 MR. SPREHN: -- there's a Footnote 1 that
22 talks about deferring 3.81-cents per kilowatt
23 hour for fuel under-recovery. Could you explain
24 that?

25 MR. KUPFER: The LEAC that had been

1 submitted at the time, there was a fuel
2 under-recovery at 3.18-cents a kilowatt hour.
3 Our feeling was because of what's going on with
4 the proposed Medicaid reimbursement that we'd be
5 getting, that would be going towards paying down
6 fuel from that deferred fuel balance from Vitol,
7 that we could defer this under-recovery in this
8 June through January -- I'm sorry, July through
9 December timeframe.

10 MR. SPREHN: To be clear, we still have a
11 pending LEAC proceeding in which that deferred
12 fuel balance remains an outstanding issue, do we
13 not?

14 MR. KUPFER: No action has been taken yet
15 on that LEAC. We've kicked the can down the
16 road.

17 MR. SPREHN: There was a LEAC petition or
18 adjustment that was due for filing on October 1st
19 but which WAPA has requested an extension. Do
20 you have an estimate as to when that filing would
21 be made?

22 MR. KUPFER: Hopefully sometime this
23 week.

24
25

1 (Exhibit No. 12 was
2 marked for identification.)

3 MR. SPREHN: I'm next going to give you a
4 copy of a notice that was filed by WAPA, the
5 acronym of EMMA? It's a disclosure, financial
6 disclosure. We marked it as Exhibit 12
7 previously. The title on the document cover page
8 is notice regarding certain operating data and
9 financial information relating to 33,960,000
10 Virgin Islands Water and Power Authority Electric
11 System Revenue Bond Anticipation notes, Series
12 2018-B.

13 HEARING EXAMINER: I'm here. Got it.

14 MR. SPREHN: Are you familiar with this
15 filing?

16 MR. KUPFER: Yes. This is the normal
17 monthly filing we do on EMMA. This is as it
18 relates to the streetlight refinancing we did
19 back in November, and this has our June 2019
20 financials.

21 MR. SPREHN: Thank you for clarifying
22 that. This is a Bond Anticipation Note for just
23 shy of \$34 million?

24 MR. KUPFER: Correct.

25 MR. SPREHN: What is the term on this

1 note?

2 MR. KUPFER: This is the Bond
3 Anticipation Note that I believe matures next
4 summer, July of 2020.

5 MR. SPREHN: By mature, you mean it must
6 be refinanced by July of 2020?

7 MR. KUPFER: That is correct.

8 MR. SPREHN: Do you have a refinancing
9 plan in place as this time?

10 MR. KUPFER: Yes, we do.

11 MR. SPREHN: What is that plan?

12 MR. KUPFER: The plan would be to --
13 again, the importance of getting rates would be
14 then to -- it could be rolled over as a BAN, but
15 the preferred would be to convert it to a senior
16 bond, but again, dependent on approval of the
17 base rates that are before this hearing examiner.

18 MR. SPREHN: And for purposes of clarity,
19 you refer to this as a street lighting project.
20 Is this the conversion of 10,000 roughly
21 streetlights to LED lights?

22 MR. KUPFER: In addition to 3-megawatts
23 of solar.

24 MR. SPREHN: And that 3-megawatts of
25 solar, that is not connected to the storage that

1 is solar power that feeds into the grid, is that
2 correct?

3 MR. KUPFER: Correct.

4 MR. SPREHN: And these are the ones
5 that's pole-mounted, is that correct?

6 MR. KUPFER: Correct.

7 MR. SPREHN: Turning within the document,
8 there are electric system balance sheets. I
9 believe it would be six pages in.

10 MR. KUPFER: What is it labeled? I'm
11 looking at the balance sheets. Looking at
12 liability or assets?

13 MR. SPREHN: Assets is where we're at.
14 This is where we're going to start.

15 MR. KUPFER: Okay.

16 MR. SPREHN: This balance sheet shows
17 that WAPA has assets of 1.6 billion, is that
18 correct?

19 MR. KUPFER: That's what it shows,
20 correct.

21 MR. SPREHN: I understand construction
22 and progress is identified as \$743 million, is
23 that correct?

24 MR. KUPFER: Yes, that's what it shows.

25 MR. SPREHN: What are those projects?

1 MR. KUPFER: We'll have to get you that
2 answer, but presumably that's probably all the
3 FEMA restoration work that's been in progress,
4 the composite pole work that's ongoing that has
5 not been turned over -- become a fixed asset yet.

6 MR. SPREHN: Turning to the next page,
7 liabilities and net assets.

8 MR. KUPFER: Okay.

9 MR. SPREHN: Do we show accounts
10 payable -- my understanding, current accounts
11 payable is \$258 million?

12 MR. KUPFER: I still don't see -- yes,
13 that's correct.

14 MR. SPREHN: And that's an increase of
15 \$100 million from the previous year, is that
16 correct?

17 MR. KUPFER: That's correct.

18 MR. SPREHN: How did it go up that high?

19 MR. KUPFER: Mostly FEMA-related
20 payables. FEMA payables are included in that
21 number. We can provide the detail for each of
22 those and that would show you what the increase
23 is.

24 MR. SPREHN: Looking further down that
25 page, we have long-term debt, and there's a

1 capital lease obligation for Vitol LPG. Shows as
2 of June 30th of 2019. That amount is
3 \$137 million, is that correct?

4 MR. KUPFER: Yes.

5 MR. SPREHN: So that would indicate that
6 WAPA has booked this at \$160 million liability
7 and paid down approximately 20 --

8 MR. KUPFER: And again, just to remind
9 you, these are unaudited financial statements,
10 but there are the two pieces to the Vitol lease
11 obligation. One is a capital lease. Others, as
12 it relates to modifications that we made to our
13 generators and to the docks, those are considered
14 long-term liabilities and not a capitalized lease
15 obligation. So they are buried into other lines.

16 MR. SPREHN: So you're saying that there
17 is not necessarily a \$23 million reduction in the
18 obligation at this point?

19 MR. KUPFER: Again, I can't answer that
20 question right now, but to my knowledge, no. But
21 there's a reason it shows this way, is there's
22 two pieces that show up on the balance sheet.

23 MR. SPREHN: Net pension liabilities are
24 shown as \$275 million on here, 274,794,360 to be
25 precise.

1 MR. KUPFER: Eh-hmm.

2 MR. SPREHN: What does that net pension
3 liability number represent?

4 MR. KUPFER: Again, that's gonna be the
5 future value of anticipated payments to retirees.

6 MR. SPREHN: Is that an obligation that's
7 actually being met by GERS?

8 MR. KUPFER: I'm not sure.

9 MR. SPREHN: Is there an asset that
10 reflects how much you've paid into GERS
11 off-setting that liability?

12 MR. KUPFER: I can't answer that
13 question. I would need my CFO here.

14 MR. SPREHN: Do you recall that both
15 Moody's and Fitch have expressed concern about
16 unfunded pension liabilities?

17 MR. KUPFER: Yes. As they are currently
18 expressing it for about every municipal entity in
19 town and in the country, including the GVI.

20 MR. SPREHN: Hearing the status of the
21 street lighting program, has that project been
22 completed at this point?

23 MR. KUPFER: Most of the lights are up.
24 Clinton, do you want to speak to the status?

25 MR. HEDRINGTON: 95 percent of the lights

1 are up, and maybe 25 percent of the panels are
2 up.

3 HEARING EXAMINER: How many?

4 MR. HEDRINGTON: 25 percent of the
5 panels. So we're reevaluating because we are
6 starting the composite poles and the underground
7 project. So we are reevaluating where those
8 panels will go because of these projects that we
9 have coming through the system to be implemented.

10 MR. SPREHN: Are we reevaluating looking
11 at whether it's practical to put them on poles as
12 opposed to in another location or just which
13 poles they go on?

14 MR. HEDRINGTON: We're reevaluating if we
15 should put them on a wood pole that's going to be
16 under-grounded next year. That doesn't make
17 sense. So that's the evaluation.

18 MR. SPREHN: That is a clearer answer.
19 Thank you.

20 One of the last pages here, in fact the
21 last two pages of this particular filing, is an
22 outage indices daily summary.

23 MR. KUPFER: What page are you on?

24 MR. SPREHN: The last two pages.

25 HEARING EXAMINER: Exhibit 13? What

1 exhibit number are you?

2 MR. SPREHN: Same Exhibit 12, the final
3 two pages. Document is printed in landscape.

4 MR. KUPFER: Appendix D you're saying,
5 yes.

6 MR. SPREHN: It should actually look like
7 this, outage indices, Mr. Kupfer.

8 MR. KUPFER: Eh-hmm.

9 MR. SPREHN: Unless yours got printed
10 sideways. Maybe it did.

11 MR. KUPFER: I don't have that.

12 MR. SPREHN: Well, first of all, could
13 you tell me what this document is?

14 MR. KUPFER: Clinton, why don't you speak
15 to it?

16 MR. HEDRINGTON: So, all utilities use
17 outage indices to evaluate their performance on a
18 customer base. And so it's our outage management
19 system that records all the outages to every
20 single customer that generates a report. And so
21 it can give you down to the minute that each
22 outage, every customer is affected on the system.

23 MR. SPREHN: And this report is for June
24 of 2019, is that correct?

25 MR. HEDRINGTON: Yes.

1 MR. SPREHN: This shows that we had
2 151,000 lost customer hours?

3 MR. HEDRINGTON: About that.

4 MR. SPREHN: Were the numbers higher in
5 July?

6 MR. HEDRINGTON: I don't know. I don't
7 have the report for July.

8 MR. SPREHN: Do you know if the number
9 was higher in August?

10 MR. HEDRINGTON: I don't have the reports
11 in front of me. You can't let the optics of --
12 so, I think you're trying to reference the
13 generation outages. That's what you were trying
14 to do, but generation outages and the compilation
15 of these outages, it can very much be lower
16 because all of these outages -- this report is
17 considered -- is taken even if a tree branch
18 takes someone out, or if a customer has a problem
19 on their side with their meter, it is still would
20 count as an outage. It's -- you can't let the
21 optics of you seeing an outage of us having a lot
22 of island-wide outages be contributed to more
23 outage hours. It is not like that. It doesn't
24 look at it just like that.

25 MR. KUPFER: And the data is really more

1 useful in terms of benchmarking yourself against
2 others, but it's difficult for us to find what
3 that benchmark should be, given we've gotten two
4 distinct grids and we're not connected to any
5 other grids. So we collect the data but -- and
6 we can show trends internally, and we can
7 benchmark ourselves against stateside grid
8 connected utilities, but like Clinton is saying,
9 it is difficult to benchmark ourselves against
10 comparable utilities.

11 MR. HEDRINGTON: This report that you're
12 seeing is not a good reference. If you want --
13 you're trying to reference the amount of hours
14 that happened on the generation outage compared
15 to a T&D related outage. You have to get the
16 cost codes and get a little deeper into the
17 report. You can't take the amount of hours and
18 try to say that we would have had more hours or
19 customer-related outages in August because of
20 your knowledge of island-wide outages, for
21 example.

22 HEARING EXAMINER: Is there another
23 report that provides that information as to which
24 outages are linked to generation issues?

25 MR. HEDRINGTON: Kind of like specifics.

1 So if you ask me -- so what we do is we take --
2 if I say, T&D group, give me how much outages
3 were caused by a broken neutral, they can get
4 those amount of hours that was dedicated to a
5 broken neutral or a tree.

6 HEARING EXAMINER: Does the Authority
7 maintain a separate report that is specific to
8 outages related to backup generation?

9 MR. HEDRINGTON: No. So it's all housed
10 in one database, right? And when I ask for it,
11 that's when I get it. So if I ask for generation
12 related outages, then I can get the report then.
13 The OMS will generate that report as I ask for
14 it. It's not just a single report being housed
15 for that. You see what I'm saying? It is a
16 request on demand kind of like report.

17 MR. SPREHN: I'm not certain the
18 customers care, which is the basis for the
19 outage. Can you provide to us an outage report
20 that indicates how much -- how many outages --
21 how many -- I'll rephrase that again, how many
22 hours customers were without service in the last
23 six months due to generation failures?

24 MR. HEDRINGTON: I think we can. Within
25 the last six months, yeah, we probably can.

1 HEARING EXAMINER: Is this something that
2 you're requesting, Attorney Sprehn?

3 MR. SPREHN: Yes, Ma'am.

4 HEARING EXAMINER: Do you need it for any
5 cross examination?

6 MR. SPREHN: If I could simply have that
7 before we're asked to provide our proposed
8 findings and conclusions.

9 HEARING EXAMINER: Mr. Hendricks, can you
10 provide it by Friday?

11 MR. HEDRINGTON: I don't think so.

12 HEARING EXAMINER: How long does it take
13 to generate that report?

14 MR. HEDRINGTON: I would just ask the
15 engineer for it. I wouldn't know how long it
16 will take him to get it.

17 HEARING EXAMINER: Can you attempt to get
18 it by Friday? If it can't be produced by Friday,
19 just let us know when it can be produced.

20 MR. HEDRINGTON: Sure.

21 MR. SPREHN: Thank you. Returning back
22 to the seventh page, which was the liabilities
23 and net assets, the balance sheet on the exhibit.

24 MR. KUPFER: Back to the balance sheet?

25 MR. SPREHN: Yes.

1 MR. KUPFER: Go ahead.

2 MR. SPREHN: Do I understand under
3 long-term debt due to water of 102,954,079
4 represents the electric system's obligation to
5 the water system for the CDF -- excuse me,
6 Community Disaster Loan.

7 MR. KUPFER: Yes, but that amount does
8 not look right and I believe we still don't have
9 it straightened out. Again, these are unaudited
10 financial statements, but, yes, that's what's
11 it's intended to represent. But again we only
12 borrowed 94 million of CDL, 17 million of which
13 is on the Authority's books. So that number, I
14 think, is incorrect. I think it's the first
15 75 million that was on Water's books, but --

16 MR. SPREHN: Is Ms. Gottlieb the person
17 who can clarify that for us here, or do we need
18 to have that brought back tomorrow?

19 MR. KUPFER: Is Ms. Gottlieb here? No.

20 MR. SPREHN: Electric system revenue
21 bonds are shown here at 226,615,000. Does that
22 number include the BANs, the Bond Anticipation
23 Notes as well?

24 MR. KUPFER: Yes, it appears that it
25 does.

1 MR. SPREHN: How much of the BANs or
2 bonds have balloon payments due within the next
3 five years?

4 MR. KUPFER: We'll have to get you that
5 but I'm not sure it's much more than the BANs for
6 the streetlights, the BANs for the Wartsila and
7 the BANs for the CDLs. After that, I'm not sure
8 if we have any BANs, but --

9 MR. SPREHN: The BAN for the CDL you just
10 referred to, how much was the BAN for the CDL?

11 MR. KUPFER: Well, again, what's on the
12 water, I believe, is around \$17 million.

13 MR. SPREHN: Seven --

14 MR. KUPFER: On the water books should be
15 around 17 million.

16 MR. SPREHN: One-seven million?

17 MR. KUPFER: One-seven.

18 MR. SPREHN: How much is outstanding in
19 BANs for the Wartsila units?

20 MR. KUPFER: \$15 million, approximately.

21 MR. SPREHN: What's the total cost of the
22 Wartsila project?

23 MR. KUPFER: 38 to 39 million.

24 MR. SPREHN: 15 million is outstanding in
25 BANs. How is the balance of the 38 to 39 million

1 paid?

2 MR. KUPFER: That's what I referenced in
3 my remarks that need to be refinanced. That
4 needs to be financed. It has not been financed
5 yet. And again, it's pending this petition for
6 base rates.

7 MR. SPREHN: The legislature previously
8 committed a revenue stream using a gas tax fund
9 for the purpose of requiring new generation. Do
10 you know how much revenue that gas tax produced?

11 MR. KUPFER: Approximately four and a
12 half million dollars a year.

13 MR. SPREHN: And how much is available of
14 that fund?

15 MR. KUPFER: I believe the -- it's around
16 10 or \$11 million. It's in the fund. I don't
17 have the exact figure based on last month's but
18 --

19 MR. SPREHN: Has that revenue stream been
20 committed to an existing debt structure?

21 MR. KUPFER: Those gas tax revenues go to
22 the trustee and sit with the trustee. Again, it
23 was pending the maturity of the 15 million-dollar
24 BAN.

25 MR. SPREHN: When does that mature?

1 MR. KUPFER: July of next year.

2 MR. SPREHN: July of next year?

3 MR. KUPFER: Eh-hmm. So at that point we
4 would expect to have \$15 million on deposit with
5 the trustee which would pay off the BAN.

6 MR. SPREHN: Is there money in the
7 current rate request to finance additional debt
8 to pay off these Wartsilas?

9 MR. KUPFER: No. In actuality, we
10 assumed in this rate petition that we would have
11 the Wartsila completion financing in place by the
12 end of the year. So we've actually reduced
13 fiscal year '20 interest expense because of that
14 refinancing. So if that -- so, to answer your
15 question, no, there's no money in fiscal year '20
16 to go towards that. The opposite is we're taking
17 money out because we expect to refinance the
18 whole project by the end of the year.

19 MR. SPREHN: Is that still your
20 anticipation?

21 MR. KUPFER: That's still our
22 anticipation, yes, again, pending approval of
23 this base rate petition.

24 HEARING EXAMINER: Are you onto a new
25 exhibit now?

1 MR. SPREHN: I'm actually looking at a
2 different one. I'm going to decide.

3 HEARING EXAMINER: Let's go ahead swear
4 in Attorney Farrington.

5 **LORELEI FARRINGTON,**
6 called as a witness, having been first duly sworn,
7 testified on her oath as follows:

8 MR. SPREHN: Director Kupfer, I'm going
9 to hand you what we previously identified as
10 Exhibit 9. It is Public Services Commission
11 staff report dated September 25, 2019.

12 (Exhibit No. 9 was
13 marked for identification.)

14 MR. KUPFER: Is this the report we didn't
15 get a copy of prior to the last meeting?

16 MR. HALL: I believe that's correct.

17 MR. SPREHN: No, this would be the
18 meeting before.

19 MR. HALL: That we didn't get.

20 MR. SPREHN: I handed a copy to counsel
21 at that meeting.

22 MS. THOMAS-GRIFFITH: At the meeting.

23 MR. SPREHN: At that meeting.

24 MR. KUPFER: We were complaining earlier
25 about getting stuff on Sunday. I think that's a

1 little earlier than getting it at a meeting.

2 MR. SPREHN: I'm going to ask you to take
3 a look at page three of this report, particularly
4 Footnote 2.

5 MR. KUPFER: Go ahead.

6 MR. SPREHN: I understood your testimony
7 earlier today to be that WAPA was forecasting
8 annual sales of electricity at 523,000-megawatt
9 hours in the upcoming fiscal year, is that
10 correct?

11 MR. KUPFER: 523,000 fiscal year '20,
12 correct.

13 MR. SPREHN: Looking at the numbers in
14 this table, that would make that forecast of
15 sales less than fiscal year 2018 but more than
16 fiscal year 2019's projection.

17 MR. KUPFER: I seriously question the
18 number that's reported there for fiscal year 2018
19 given that that included about 5 or 6-months of
20 storms, and the 19 number has been restated since
21 the June financials is now closer to 523,000, but
22 that 2018 number makes no sense to me. So until
23 you show me the source of it, I can't talk about
24 it.

25 MR. SPREHN: Starting with fiscal year

1 2012, would it not indicate that there had been a
2 substantial decline in WAPA sales prior to the
3 storms?

4 MR. KUPFER: That would be correct.

5 MR. SPREHN: So, the trend of declining
6 sales is not entirely due to the storms, is that
7 correct?

8 MR. KUPFER: I was strictly speaking to
9 fiscal year 2017, what was submitted for base
10 rate of 641 and where we currently are. I made
11 no comment about any times prior to that.

12 MR. SPREHN: Turning to page 6 of this
13 report, there's a description of what we
14 understand the current WAPA rate proposal to be
15 on page 6. Would you review that and tell me if
16 you believe that representation is accurate?

17 MR. KUPFER: That would be helpful to see
18 it in absolute dollars and not in cents, but the
19 proposed LEAC is where we're at, 2.5-cents.
20 Leased generation removed is 3.08-cents, that is
21 correct. The reduced major maintenance 6, I
22 assume, relates to leased cost. I don't really
23 ever describe it as major maintenance. I
24 describe it as leased cost. The Wartsila fund
25 via fuel tax, yes. Like I said, we did estimate

1 that there would be changes from that original
2 petition related to Wartsila. We did include
3 some savings on the AMBAC refunding. That
4 refunding has since been canceled. There was an
5 adjustment related to senior debt from the
6 original filing to the supplemental. So that
7 seems reasonable. In the reserve of a penny
8 sounds correct as well.

9 MR. SPREHN: In your comment about the
10 CDs in absolute dollar amounts, is there a single
11 exhibit or document attached to your testimony or
12 anyone associated with WAPA in this that shows
13 this in absolute dollar amount?

14 MR. KUPFER: I believe in the
15 supplemental filing, maybe I could have Henry or
16 Murray come up here. I believe in the
17 supplemental filing, there was a page that went
18 through these adjustments.

19 (Exhibit No. 2 was

20 marked for identification.)

21 MR. HAMILTON: On Exhibit 2 of the
22 supplemental filing are the actual dollar values
23 that are shown. And Larry, these cents came from
24 a presentation that you had presented, and fitted
25 their report to include --

1 MR. KUPFER: Now that I'm spending more
2 time looking at it, the numbers are coming back
3 to me, but that schedule does lay them out in
4 absolute dollars.

5 MR. SPREHN: Again, can you state that
6 clearly and loudly so we can --

7 MR. HAMILTON: Exhibit 2 of the
8 supplemental filing by WAPA's utility rate
9 consultants, Exhibit 2.

10 MR. SPREHN: This would be the August 5th
11 filing?

12 MR. HAMILTON: Yes.

13 MR. SPREHN: That would be the testimony
14 of Henry Thomas?

15 MR. HAMILTON: Correct.

16 MR. SPREHN: I would like to ask the
17 hearing examiner, do you have these with you
18 available?

19 HEARING EXAMINER: The supplementary
20 reports that are --

21 MR. SPREHN: These copies.

22 HEARING EXAMINER: I do.

23 MR. SPREHN: You've reviewed the exhibit?

24 MR. HAMILTON: Exhibit 2, the adjustment
25 being on line 23.

1 MR. KUPFER: Could you just confirm for
2 me on page 6 the sentence that says this proposal
3 will result in rates at an average of 42.97-cents
4 per kilowatt hour while the current rate average
5 is 43.94-cents - 8.03-cents differential? Assume
6 the 43.94 is a typo. It should be 42.94.

7 MR. SPREHN: That seems correct. I'm
8 sorry, again, Mr. Hamilton. Looking now at your
9 Exhibit 2, four pages, Exhibit 2 is that?

10 MR. HAMILTON: And you want to be on page
11 204.

12 MR. SPREHN: 204?

13 MR. HAMILTON: Beginning on line 23.

14 MR. SPREHN: It appears to be deferred
15 capital projects. Is that what you understand to
16 be the reduced major maintenance?

17 MR. KUPFER: The reduced major
18 maintenance of the 1.7 --

19 MR. SPREHN: Hold on a second, Mr.
20 Kupfer. My question was, is the deferred capital
21 projects listed on line 23 of Exhibit 2
22 comparable or equivalent to the reduced major
23 maintenance item on the report identified as
24 Exhibit 9?

25 MR. KUPFER: So, let me first address,

1 we -- major maintenance, when you look at what
2 we've submitted and in our budgets is strictly
3 leased generation cost, it has nothing to do with
4 maintenance. Why we've called it that
5 historically? We have. So, the savings you see
6 there have nothing to do with deferred
7 maintenance. When we do maintenance on a gas
8 turbine generator, that maintenance is actually
9 capitalized, and is not an expense. So that line
10 item in our budget and in the petitions here is
11 just for leased generations for Aggreko, for APR,
12 and for amounts due to Wartsila under our
13 operation and maintenance agreement. The
14 original petition we submitted was submitted
15 before we had renegotiated the APR agreement. So
16 when we renegotiated the APR agreement, we were
17 able to reduce those leased costs by the
18 1.7-cents a kilowatt hour and, again, I have to
19 look at the detail, but we may have also assumed
20 that some of the Wartsila O&M would be paid
21 during the Wartsila refinancing as well as some
22 of the APR payments, and I have to look at the
23 single page summary that I don't see here.
24 But yes, that's it.

25 Yes, we also had included in that original

1 petition some additional leased generators for
2 St. Croix, but I didn't feel it was appropriate to
3 include the leased generators because we weren't
4 showing anything on the LEAC side. So it didn't
5 seem right to me to put in and request for
6 generators when we didn't have the supporting
7 LEAC. Our plan would be, because we're still
8 considering some additional leased generators for
9 St. Croix, would be to bring those to the
10 Commission when we have an idea of what we want
11 and to seek a rate for those, and at the same time
12 a reduction in LEAC so that the customer at the
13 end of the day would be seeing a net benefit. If
14 the customer doesn't get a net benefit, then there
15 would be no reason to bring those forward.

16 MR. SPREHN: Would you explain what the
17 refunding of the 2003-A bonds (AMBAC) is?

18 MR. KUPFER: We have 2003 Series-A bonds
19 are insured by AMBAC. Because of our credit
20 rating and the way that the bond insurance market
21 works, because we're a junk bond status, AMBAC
22 has to hold the cash reserves of \$36 million
23 related to a potential default on these bonds.
24 So, if WAPA were to default, the holder of those
25 bonds would go to AMBAC and AMBAC would have to

1 pay them \$36 million that they're holding in
2 reserve.

3 As part of this transaction, AMBAC was
4 willing to make a 9 million-dollar payment to the
5 Authority, and we would get an outside investor to
6 take over those bonds. They would be uninsured
7 bonds at that point at roughly a 30 million-dollar
8 par value. So the par would go from 36 to 30. Of
9 that \$9 million, 6 million of it or so would be
10 used to fees to bonds, because we're only getting
11 30 million from the new investor, and then WAPA
12 would have, in fact, \$4 million of a benefit that
13 the plan was to -- 2 million of that would go to
14 reduce interest expense in fiscal year '20, and
15 that's where you see the .38-cents a kilowatt
16 hour, that's \$2 million interest savings. And
17 then \$2 million was going to go as a good faith
18 payment to Wartsila as we were waiting on the
19 refinancing. That deal was set to close, I
20 believe, September 21st or 27th. When the stories
21 hit the newspaper about WAPA being subpoenaed, a
22 couple hours later, the investor sent us an e-mail
23 saying they were canceling that transaction. So
24 we built it into that rate petition, but that deal
25 has since gone away, but that was the outline of

1 the transaction. It may not be dead in the water
2 because that investor is still potentially
3 interested, but they're very interested in what's
4 happening here today.

5 MR. SPREHN: What was the interest
6 rate -- well, in 2003, WAPA had an investment
7 grade credit rating, did it not?

8 MR. KUPFER: Yes, and the interest was
9 probably about 5 percent. The proposed interest
10 rate on this, I believe the last discussion was
11 like six and three-quarters, but because we were
12 reducing the principal amount from 36 to
13 \$30 million, the interest, you know, we were
14 saving \$2 million of interest in fiscal year '20,
15 and net/net the out-years, the interest expense
16 was neutral.

17 I would like to say in general in my
18 remarks today, when I said, when the dust settles,
19 while there's no impact on the ratepayer, you
20 asked that question earlier, Hearing Examiner
21 Walker, this spells it out, and at the end of the
22 day, it's a .03-cents per kilowatt hour higher
23 cost. But that's what I say with all the ins and
24 outs of what's going on, there's no, you know,
25 overall significant impact to the ratepayer.

1 HEARING EXAMINER: I calculated at 5.7
2 versus 5.8. Once you do the math, I think, based
3 on the numbers you cited earlier from the leased
4 generation surcharge and anticipated reduction,
5 the numbers you cited totaled 5.7 compare to the
6 5.8 increase. Is that the amount?

7 MR. KUPFER: I have to see the numbers,
8 but at the end of the day, there is no
9 significant increase in the overall rates to the
10 customer, but there is a significant benefit to
11 the Authority because we now have base rates we
12 could take to the investment community, finish
13 our Wartsila refinancing, start working in
14 earnest on the propane refinancing and the AMBAC
15 deal comes potentially back to life.

16 HEARING EXAMINER: When you say that you
17 were working on a transaction or working on a
18 deal or trying to refinance something, and you
19 say that you get subpoenaed by the Legislature or
20 some sort of statement is made and then you get a
21 call from the investor canceling the anticipated
22 transaction, does the investor actually say that?
23 Does the investor actually say --

24 MR. KUPFER: No. There was an e-mail
25 from the investor, and the e-mail said for a

1 number of reasons, we're canceling the
2 transaction. But I personally think the subpoena
3 in that new story was the straw that broke the
4 camel's back. Did they say that? Are they ever
5 going to say that? No, because this particular
6 investor is going to tell you, you know, whatever
7 he or she thinks is in their best interest to
8 tell you, but that was the chronology. The story
9 hit the papers, and a couple hours later the
10 e-mail came, which said, for a number of reasons,
11 we are canceling the transaction. You know, the
12 good news is since then, our investment bankers
13 had additional discussions with this investor.
14 The investor is not only interested in this.
15 They're interested in other financings we have.
16 So we have been able to resurrect it, but it's
17 still going to be very much dependent on these
18 proceedings and their end result.

19 HEARING EXAMINER: Did you by any chance
20 have any e-mails or any correspondence or
21 anything from any bankers or investors stating,
22 you know, we're looking forward to the outcome of
23 this base rate case, or this is what we can offer
24 contingent upon the outcome? Do you have
25 anything that's clear --

1 MR. KUPFER: I'll have to ask our
2 municipal adviser. I have not seen anything but
3 I was just at lunch on the phone with our
4 municipal adviser, because the phone call I got
5 this morning was from Thomas Ron at Wartsila who
6 is their individual in charge of the North and
7 South America operations, he wants to have
8 meeting on Friday to find out what's going on
9 with these. I told him we're in a PSC hearing.
10 So we will have a phone call with them on Friday
11 with the municipal adviser to get them up-to-date
12 of where we are. So verbally I have heard those
13 statements. I will inquire if there is
14 anything -- any e-mails back and forth to that
15 effect.

16 MR. SPREHN: I'm actually going to step
17 away from this and go back to something that
18 occurred to me. You made a comment sometime ago
19 in our discussions this afternoon about comparing
20 the Virgin Islands Water and Power Authority
21 rights and outages and other issues to other
22 utilities with comparable but with difficulty,
23 have you compared WAPA's rates and services to
24 those on Kauai?

25 MR. KUPFER: I know Kauai has come up

1 before, but I don't remember the analysis or
2 anything. I might have gone from it, or if I
3 even did it. I know we've looked at other
4 Hawaiian islands, and Bloomberg has done a lot of
5 work with the Hawaiian islands in making
6 comparisons. I do not recall anything about
7 Kauai island that stands out.

8 MR. SPREHN: You would have the same
9 answer as to Malikai and Maui?

10 MR. KUPFER: Yep.

11 MR. SPREHN: Are you familiar with the
12 Golden Valley electric system in Fairbanks,
13 Alaska?

14 MR. KUPFER: What's the name of that
15 again?

16 MR. SPREHN: Golden Valley in Alaska.

17 MR. KUPFER: No, I am not.

18 MR. SPREHN: What about Guam's electric
19 system or Saipan's?

20 MR. KUPFER: A little bit.

21 MR. SPREHN: Are their rates lower?

22 MR. KUPFER: Their rates are lower and
23 their demand is probably three to three and a
24 half times the Authority's.

25 MR. SPREHN: They are not grid connected,

1 are they?

2 MR. KUPFER: No.

3 MR. SPREHN: Your presentation and
4 proposal for the current -- for this base rate
5 increase of 300 or so cent net -- can I get a
6 break to get some water?

7 HEARING EXAMINER: Sure. That's fine.
8 We can take a five-minute break.

9 [Brief recess.]

10 MR. SPREHN: Mr. Kupfer, thank you for
11 your patience while I get a drink. I just wanted
12 to clarify one thing. While the timing doesn't
13 appear to be a particular issue, is it WAPA's
14 position that whenever a new rate
15 incorporating -- if WAPA's requested rate goes
16 into effect, that the leased generation surcharge
17 should end at the same time?

18 MR. KUPFER: In fact, what we sent up as
19 a markup for the -- you know, to go into the
20 presentation, we said upon expiration or
21 termination of the leased generation surcharge,
22 the "or termination" got deleted. I just said
23 "expiration," but expiration or termination I
24 think was the language that we had proposed.

25 MR. SPREHN: Thank you. That was my

1 understanding. I just wanted to make that clear
2 on the record.

3 Returning to our Exhibit 9, again, on page
4 6, we understand that WAPA's proposal also offers
5 a promised future reduction by the end of the next
6 calendar year, is that correct?

7 MR. KUPFER: I'm sorry, repeat the
8 question.

9 MR. SPREHN: Does WAPA's request for a
10 rate increase now also state that there will be a
11 future rate reduction within the next year and a
12 half?

13 MR. KUPFER: I'm not sure the petition as
14 submitted with the detailed schedule says that.
15 Certainly the testimony does. My remarks today
16 do, but I don't know how you can link something
17 that needs to happen in the next 30 to 60-days to
18 something that is going to be a -- we talked
19 about a three to five-year transition plan,
20 including some major impacts over the next year
21 and a half related to the new generation here in
22 St. Thomas, and renewables that we think we can
23 get online, but other than that, I don't think
24 they're linked. It's really for informational
25 purposes that that's what we believe will be

happening, but we can't wait for those projects to go -- to be in place and then get the rate relief.

MR. SPREHN: So, as we sit here today, WAPA is not committing to that 9-cent rate reduction in the next 18 months?

MR. KUPFER: No. That's definitely something we're committed to. That's definitely something we're working to every day, but I just don't see it as being -- I don't know how you can link something that we need today with something that's going to happen over the next year and a half.

MR. SPREHN: We talked previously about a proposed vital refinancing, and that is mentioned in your supplemental testimony as a possible savings of 1.79-cents per kilowatt hour.

MR. KUPFER: Yes.

MR. SPREHN: Describe that proposal.

MR. KUPFER: I think I said 2-cents in my
-- I rounded it to 2-cents in my remarks this
morning.

MR. SPREHN: Could you describe what that proposed refinancing would be?

MR. KUPFER: There are private entities

1 that we have been talking with that would buy the
2 facilities from Vitol. So that entity would
3 continue to own the facility. That entity would
4 operate that facility. Some of those entities
5 are also interested in supplying the propane
6 because they have that -- that's some of the
7 things that they do, or alternatively we could
8 find another supplier for the propane or Vitol
9 could continue on as the supplier. Those would
10 be -- we think based on today's market, they
11 would be 20-year terms, nominally at 7 to
12 8 percent interest, but we've had, you know, no
13 term sheets with any investors, no detailed
14 discussions of terms with any investors. That's
15 just our assessment of, you know, what these
16 energy funds are out there doing today with other
17 projects.

18 MR. SPREHN: So, would it be reasonable
19 for the public to expect any refinancing to Vitol
20 would be changing the current ten-year
21 arrangement which WAPA has signed but has not
22 been approved by the Public Services Commission
23 to a 20-year arrangement?

24 MR. KUPFER: Minimum of 20-years, yes.

25 MR. SPREHN: Minimum of 20 years?

1 MR. KUPFER: Yes. You know, one of the
2 major problems with Vitol, it's a ten-year
3 basically 15-percent mortgage. So it doesn't
4 match with the life of the asset, and it's, you
5 know, basically company financed. It's not
6 somebody that's in the business to loan money.
7 So it's very expensive. That 15-percent people
8 talk about, that's not out of line of what you
9 would get if you were borrowing from companies
10 that aren't in the business to loan money.

11 (Exhibit Letter V was
12 marked for identification.)

13 MR. SPREHN: I'm going to ask you to take
14 a look at a document that WAPA proposed as
15 Exhibit V, is a document which shows residential
16 charges.

17 MS. THOMAS-GRIFFITH: Did you say B?

18 MR. SPREHN: V as in Victor. Okay. For
19 descriptive purposes, there are two sets of
20 tables here, the upper table and the lower both
21 beginning with the word "residential." The upper
22 table has fiscal year 2012, 2013 and 2014. The
23 lower table, fiscal year 2015, '16, '17, '19 and
24 2020. Are you familiar with these tables?

25 MR. KUPFER: Yes.

1 MR. SPREHN: Can I ask you to look at the
2 energy charge? The energy charge is what's also
3 generally referred to as the base rate, is it
4 not?

5 MR. KUPFER: Yes, that's fine. Let's go
6 with the base rate because the others are
7 surcharges, yes.

8 MR. HAMILTON: Well, customer charge.
9 Those are part of the base rates.

10 MR. SPREHN: That's correct. Thank you.
11 The customer charge is part of base rates.

12 In 2012, was the energy charge per
13 kilowatt hour 8.3-cents per kilowatt hour?

14 MR. KUPFER: Yes.

15 MR. SPREHN: And that charge went up to
16 9.3 in August of 2012, correct?

17 MR. KUPFER: Yes.

18 MR. SPREHN: Then it went down again back
19 to 7.3-cents, 7.4 rounding it up?

20 MR. KUPFER: Yes.

21 MR. SPREHN: And it is now at 15-cents
22 for the first 250-kilowatt hours and 17.6-cents
23 for all above 250-kilowatt hours, correct?

24 MR. KUPFER: Correct.

25 MR. SPREHN: And the proposal here is to

1 raise that number to what?

2 MR. KUPFER: Henry, you want to take
3 that?

4 (Exhibit Letter M was
5 marked for identification.)

6 MR. THOMAS: First of all, I would also
7 like to clarify that the customer charge went
8 down, as well in January 2014. This is, again,
9 in our consultant's testimony Exhibit 4. The
10 first one through 250-kilowatt hour residential
11 charge would be .220891. So, .22-cents for that
12 first tier.

13 MR. SPREHN: And for the above 250 tier?

14 MR. KUPFER: Yes, sir, is .254713, and
15 again, I'm referring to Exhibit 4.

16 MR. SPREHN: So, to clarify, the consumer
17 charge would have gone in -- excuse me, not
18 consumer charge. The residential rate per
19 kilowatt hour would have gone in eight years from
20 a little over 8-cents to between 22 and 25-cents
21 a kilowatt hour for the energy charge, if this is
22 approved, is that correct?

23 MR. KUPFER: After the impact of two
24 devastating hurricanes, category 5 hurricanes,
25 yes, that is correct.

1 MR. THOMAS: Murray is bringing up a
2 point that, you know, the energy, and to me when
3 I look at base rate, I'm adding the energy and
4 the surcharges. So, in this particular request,
5 there has been a reduction in surcharges. Did
6 you factor that into what you just --

7 MR. HAMILTON: Yes, that's what Henry was
8 wanting to pass up.

9 MR. SPREHN: I'm sorry, I'm going to
10 defer to you -- you have a document that you
11 think will help all of us?

12 MR. HAMILTON: It's Exhibit 4. This was
13 revised. Passing those out. It was revised this
14 morning.

15 MR. THOMAS: We want to offer this as a
16 supplement. I think it will just clarify what's
17 going on with the surcharges in particular --

18 HEARING EXAMINER: I got it.

19 MR. HAMILTON: Where I was referencing,
20 Attorney Boyd, was on lines 11 and 12. That was
21 your first and second block rate for your
22 residential customer.

23 MR. SPREHN: All right, thank you.

24 MR. HAMILTON: In addition to the two
25 hurricanes which Mr. Kupfer noted over that time

1 period the increase in the rates overall sales
2 declined about 30 percent during that period,
3 well before the 2012 rate study was concluded in
4 2014.

5 MR. SPREHN: I'm going to ask you to come
6 back to that.

7 Mr. Hamilton, you just provided, with the
8 assistance of Mr. Thomas, an updated version of
9 WAPA Exhibit EPRMG-4. This was prepared as of
10 this morning dated 10/22/2019 at the bottom. It
11 runs eight pages long. Would you describe to us
12 what this revised exhibit shows?

13 MR. HAMILTON: Yes, Sir. So, Exhibit 4
14 is basically our existing to proposed monthly
15 bill comparison. We've got a range of different
16 customer classes here between the residential
17 customer, your small commercial non-demand
18 customers and your large demand customers. First
19 of all, I would like to point out this exhibit
20 was put together many years ago in consultation
21 with the PSC's rate consultants to make sure we
22 had a good platform of various customer classes
23 to compare against.

24 For our residential class starting on page
25 1, we have two levels of customer usage, one, and

1 250 kilowatts per month and another at
2 400 kilowatts, there's an 800-kilowatt power bill
3 on the following page. So if we start with the
4 first section, one, we have the adjustments at the
5 top of the page from row 1 through 8. These are
6 all the adjustments in addition to base rates,
7 including the current LEAC of 19.25-cents roughly.
8 We have the generation surcharge at 3-cents, and
9 of course as I understand that, that charge was
10 supposed to sunset as soon as we have permanent
11 base rates in place, or the earliest of six
12 months, whichever comes first.

13 HEARING EXAMINER: As of December 31,
14 2019 date?

15 MR. SPREHN: My understanding, yes.

16 MR. HAMILTON: Yes, Ma'am. We have the
17 pilot surcharge, the self-insurance fund
18 surcharge, the OPEB surcharge that we're
19 recommending to reinstate, I should add. The
20 maintenance surcharge and the line loss
21 surcharge, and again in our testimony, we're
22 actually recommending that those two surcharges
23 be rolled up into base rates. So you could see
24 under the proposed rate that the maintenance
25 surcharge will go to zero, and the line loss

1 surcharge would also go to zero under our
2 proposed rate recommendation.

3 On the residential bill, the 250-kilowatt
4 starting on line 9, we've got the customer charge
5 currently at 486, which will grow to \$6.27. You
6 have your first tier rate from 1 to 250, which is
7 really only applicable for this particular bill.
8 The current charge, including the existing
9 generation lease surcharge is \$105.67. It's
10 approximately 43-cents per kilowatt hour. The
11 proposed bill will be \$110.83. It is a \$5.16
12 increase. It's approximately 44-cents per
13 kilowatt hour. The specific number there is
14 2-cents .07 for that particular bill.

15 And as you go through the various classes,
16 you'll see on average the bill increase is
17 5 percent of the total bill and approximately a
18 2 percent increase, which I think is fairly
19 consistent with the other testimonies that were
20 provided.

21 As you go through the pages, again, you'll
22 have small commercial non-demand. Obviously,
23 depending on the various usage levels, each
24 customer bill is gonna be impacted uniquely.

25 MR. SPREHN: Let me go back to page 1 on

1 this. To be clear on this, the self-insurance
2 surcharge, which is currently at \$.001925 per
3 kilowatt hour or .19-cents per kilowatt, is that
4 fund collected in escrow for the limited purpose
5 of self-insurance and hazard mitigation?

6 MR. HAMILTON: It's my understanding.

7 MR. SPREHN: Have WAPA confirmed that
8 that money is, in fact, set aside for that
9 purpose?

10 MR. KUPFER: Debra, why don't you come up
11 and answer that question?

12 **DEBRA GOTTLIEB,**
13 called as a witness, having been first duly sworn,
14 testified on her oath as follows:

15 MR. GOTTLIEB: The amount is set aside.

16 MR. SPREHN: My question is, is that
17 simply a book entry setting aside an amount for
18 that or is there actually an account cash set
19 aside for that fund?

20 MS. GOTTLIEB: Book entry.

21 MR. SPREHN: The Public Services
22 Commission had several years ago enacted an OPEB
23 surcharge. Do you know why that was
24 discontinued?

25 MR. THOMAS: So, in the interim rate

1 filing that is in place today, because of the
2 magnitude of the increases considered at that
3 time, WAPA elected to discontinue funding that
4 OPEB surcharge until such time that we could see
5 greater fuel savings so it would have a lesser
6 impact on overall rates. You would be aware that
7 OPEB has other post employment benefits. These
8 are -- this liability that you talked about on
9 the balance sheet is an accrual of the future of
10 requirements for this based on actuarial studies.
11 The annual amounts funded into -- that are
12 actually paid for currently retired employees is
13 a subset of the overall OPEB number. So under
14 the pledge, if we put money into an escrow fund
15 for OPEB, it is expensed as an OPEB expense in
16 that year. However, those monies accumulate in
17 that fund so that we have monies down the road to
18 pay down those liabilities. So in that last rate
19 case, executive director, in trying to mitigate,
20 and this is something we discussed at length with
21 you and the PSC consultants during that case,
22 that we elected to propose to defer it for the
23 time being until we could get the new generation
24 fleet in place, lower rates, and then be able to
25 fund it without a larger impact on the

1 ratepayers. And while there is a fiduciary
2 requirement to deal with it, it's not a legal
3 requirement that they have to fund in the current
4 year all future pension. As Mr. Kupfer said
5 earlier, every client I work with has an OPEB
6 liability. Many of them only fund the current
7 portion and not the future portion that's
8 accrued. But due to changes in governmental
9 accounting, it gets recognized as an expense.
10 Particularly when there's an escrowed amount that
11 is funded, it gets treated as an expense for
12 coverage purposes. So WAPA's coverage pledge
13 actually allows for it to be counted as an
14 expense and reduced coverage when funding is
15 made, but it's silent on the requirement to fund
16 that, as well as the law doesn't specifically
17 require it.

18 Now, our accountants and our other
19 fiduciaries would encourage that to be paid, but
20 again at the time of that rate case, it was a
21 matter of, you know, which dragon we slay first,
22 and the important thing was to try to put this
23 generation plant in place. So they decided to
24 defer that at the urging, and some of our earlier
25 discussions, including with Mr. Madan and current

1 management elected to put it back in.

2 MR. SPREHN: While I'm sure employees
3 would pretty appreciate that, wasn't it accurate
4 that several years ago, WAPA's auditors pointed
5 to changes in the GAP requirements which required
6 that OPEB be amortized over time rather than left
7 as a liability simply be paid at some distant
8 point in the future?

9 MR. THOMAS: It was required that -- the
10 GAP standards required that on your income
11 statement, not cash flow for coverage but on the
12 books of the Authority, that you had to recognize
13 the accrued expense each year. So it's an
14 accrual of that future expense. It is not --
15 GASB does not require the payment of that expense
16 in that current year, but you have to recognize
17 it for statement of income. And we consulted
18 with the accountants that made that finding that
19 ultimately led to the first OPEB surcharge being
20 put in place and they informed us that it was a
21 management decision, ultimately, that it wasn't a
22 legal requirement but a management decision.

23 MR. SPREHN: And you represent that there
24 was a prior approved OPEB surcharge, wasn't
25 there?

1 MR. THOMAS: Yeah, it was.

2 MR. SPREHN: Did those funds get set
3 aside for the payment of OPEB?

4 MR. THOMAS: I believe there was a period
5 of time when they were no longer being set aside
6 and that's another reason we pulled them out of
7 the rates. Initially those funds were being set
8 aside -- I believe there is a balance in there of
9 those funds that have been escrowed to a certain
10 point in time, and then because of the cash flow
11 issues, at the time they were unable to continue
12 making those payments to the escrow fund.

13 MR. SPREHN: Skip over to the line loss
14 surcharge for a moment. Line loss surcharge was
15 established to help improve the quality of the
16 transmission system and reduce energy losses
17 through that system, is that correct?

18 MR. THOMAS: That's correct.

19 MR. SPREHN: And effectively you have an
20 all new transmission system at this point, don't
21 you?

22 MR. THOMAS: Should be pretty new. It's
23 not to say that there's ongoing maintenance
24 associated with it.

25 MR. SPREHN: One would hope it was built

1 with line losses as consideration in the new
2 system. Maintenance surcharge, could you
3 describe what that surcharge was for and when it
4 was put in place?

5 MR. THOMAS: I'm not certain of the
6 timing of when it was put in place.

7 MR. KUPFER: Looks like January of '14.

8 MR. THOMAS: Clinton, can you tell me --

9 MR. HAMILTON: That came out of the rate
10 case.

11 MR. THOMAS: I think Clinton would be
12 best to speak to the maintenance surcharge as of
13 --

14 MR. HEDRINGTON: I wouldn't be able to
15 speak to that.

16 MR. HAMILTON: All of those surcharges,
17 if you look, came out of the 2012 rate case that
18 was finally settled January of 2014.

19 MR. THOMAS: Right. Again, I assumed it
20 was intended to take care of deferred maintenance
21 issues that weren't built into the rates. And by
22 setting it as a surcharge, what that allowed the
23 Authority and the Commission to do was to
24 periodically review those surcharges to ensure
25 that the maintenance was accrued. At one point,

1 the direction we were given was we wanted to get
2 rid of all these pieces of the rates and roll
3 them into a base rate, and that was -- well, my
4 understanding is that it was the instruction of
5 the commission to commission staff, and that's
6 why we rolled it in.

7 MR. HAMILTON: Even in the last rate case
8 that was filed, we just didn't get that far.

9 MR. KUPFER: Akeyla, do you want to --

10 MS. CHRISTIAN: I wanted to put on the
11 record, as Marie said, that these prices for the
12 surcharge did go into effect January 1st. What
13 the monies were spent on, this body is well aware
14 because every quarter we had to report what we
15 spent the money on, how we spent it and how much
16 was collected in a report sent to the PSC every
17 quarter.

18 MR. SPREHN: Has that reporting continued
19 to date?

20 WENDY WILLIAMS,
21 called as a witness, having been first duly sworn,
22 testified on her oath as follows:

23 MS. WILLIAMS: Wendy Williams.

24 HEARING EXAMINER: What's your position
25 at the Authority?

1 MS. WILLIAMS: Financial Analyst II. In
2 regards to the maintenance surcharge, we haven't
3 reported on that for -- I think the last time we
4 reported on it was before the hurricane, probably
5 January 2017 or so -- April 2017, sorry.

6 HEARING EXAMINER: The reason that you
7 stopped reporting, was it due to the hurricane?

8 MS. WILLIAMS: No. The reason that we
9 probably stopped reporting on it was because of
10 the accuracy of the data that's in the system
11 regarding the expenses that are being charged to
12 the maintenance.

13 HEARING EXAMINER: Okay. Thank you.

14 MR. SPREHN: Probably a good time to
15 address the issue of maintenance expense. In the
16 budgets that you've submitted, can you identify
17 for us where we find the maintenance expense in
18 the annual budget?

19 MR. HAMILTON: Again, I think as
20 Mr. Kupfer suggested earlier, when they're
21 looking at major maintenance, we're referring to
22 the lease payments. Is that what you're asking
23 about, or are you asking about a capital budget?

24 MR. KUPFER: We have a line item in our
25 budgets called maintenance. And so, you know,

1 the number that, for instance, I summarized in
2 the table I presented this morning would have
3 been the maintenance for both. You know, all
4 maintenance, sort of routine maintenance at the
5 Authority in the transmission and distribution
6 department as well as the production department.
7 The numbers are a little over \$6 million. I
8 don't know if Debra or Joan or anybody have
9 anything to add related to maintenance charges?

10 MS. FOY: Joy Foy. The 2019-2020 budget,
11 we have the maintenance expense associated with
12 all the units, the power plant units, and we also
13 have one associated with the Vitol unit, which we
14 get from this particular surcharge, but not
15 surcharge. That was included in the first
16 initial base rate increase, which was budgeted at
17 5,000, but -- 5 million. It has been over
18 \$8 million so far in maintenance.

19 MR. SPREHN: Which one, generating units
20 or --

21 MR. KUPFER: She's talking Vitol O&M
22 charge.

23 MS. FOY: The amount of funding that you
24 all provided in the last base rate was based on
25 5 million. That money has not been sufficient to

1 cover the cost so far.

2 MR. SPREHN: In the 2019-2020 maintenance
3 on the generating units, what is the line item on
4 that one?

5 MS. FOY: The expense for the last
6 budget, 6.6 million.

7 MR. KUPFER: But what's missing from --
8 that number does not include what we capitalized
9 maintenance for the --

10 MS. FOY: No.

11 MR. SPREHN: Which is the next question.

12 MR. KUPFER: I don't know if they tracked
13 that. Do we track that by the generating unit?
14 What do we have?

15 MS. FOY: Yes, we do. By FERC, the
16 accounting system tracks all units, have a FERC
17 number. So you could actually tell what
18 production unit was used, what maintenance
19 expense was affiliated with each production unit.

20 MR. THOMAS: How the maintenance expenses
21 were capitalized? That goes go to plant?

22 MS. FOY: That's 99, and it goes to the
23 plant.

24 MR. THOMAS: Do you carry that by unit as
25 well?

1 MS. FOY: Yes, we do.

2 MR. SPREHN: Do you recall the gross
3 amount of that capitalized maintenance budget?

4 MR. KUPFER: For which year?

5 MR. SPREHN: The current year, the test
6 year.

7 MR. KUPFER: Well, the test year, as I
8 said, we're not including any internally funded
9 capital. So, to the extent that we have a
10 generator that needs maintenance, which we do,
11 we're going to have to, you know, dig and come up
12 with those funds to do that work because we're
13 not budgeting anything in our petition here.

14 MR. PURCELL: That was that first
15 adjustment on Exhibit 2, the 13.9 million.

16 MR. SPREHN: Thank you. That was the
17 next question. I was going to suggest that we're
18 closing in on the 3:30 time to adjourn. If I
19 spend some of my evening looking over this, I
20 could make a tighter series of questions for
21 tomorrow morning.

22 HEARING EXAMINER: On this particular
23 exhibit?

24 MR. SPREHN: On this exhibit and the
25 conclusion of Mr. Kupfer.

1 HEARING EXAMINER: Okay. So, you'll
2 resume with this exhibit tomorrow morning,
3 updated E?

4 MR. SPREHN: Yes.

5 HEARING EXAMINER: And how much more time
6 do you anticipate --

7 MR. SPREHN: With Mr. Kupfer, not more
8 than a half hour. I assume WAPA has other people
9 they're actually going to put up, Mr. Thomas and
10 other submitted testimony.

11 HEARING EXAMINER: Okay. That's fine.

12 MR. SPREHN: Thank you.

13 HEARING EXAMINER: No problem. So what
14 we will do now, we'll break. I know some of us
15 are heading over to St. John for the public
16 hearing. We'll resume tomorrow morning at 9:30
17 with the evidentiary hearing. Who do you intend
18 to call after Mr. Kupfer?

19 [Recessed at 3:24 p.m.]

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REPORTER'S CERTIFICATE

I, Desiree D. Hill, Registered Merit Reporter, do hereby certify that the above-named meeting was taken by me by machine shorthand and represents the official transcript of said meeting; and that said transcription is true and correct.

In witness whereof, I have hereunto subscribed my hand.

Desiree D. Hill, RMR